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BERNARD B. POLIAKOFF

(1916-1955)

J. MANNING POLIAKOFF

(1923-1969)

MATTHEW POLIAKOFF

(1919-1979)

November 18, 1999

Mr. Reuben Bussey  
U.S. EPA Region IV  
Atlanta Federal Center  
61 Forsythe Street, SW  
Atlanta, GA 30303-3415

**RE: EXIDE CORPORATION - GREER, S.C. FACILITY**

Gentlemen:

Enclosed is the deposition of Exide's in-house counsel, Ari D. Levine.

As you know we have requested that Exide clean up King Acres subdivision. We hope that this information will assist S.C. DHEC in getting cooperation from Exide Corporation. We believe the clean up should be 400 ppm or less and down to six inches.

Thank you for your attention to this matter.

With best regards, I am

Yours very truly,



RAYMOND P. MULLMAN, JR.  
ATTORNEY AT LAW

Enclosure

cc: Steve Machemer, NEIC  
Ms. Theresa Hosicle, NEIC



10732307

Ms. Diana A. Love, NEIC  
Dr. R. Marino, S.C. DHEC  
Mr. Scott Wilson, S.C. DHEC  
Mr. Thom Berry, S.C. DHEC  
Mr. Gary Stewart, S.C. DHEC  
Mr. Ralph Howard, US EPA  
Mr. Warren Dixon, US EPA

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION

MARK ANTHONY BYARS,  
Plaintiff

v.

EXIDE CORPORATION,  
Defendant

C/A No: 6:99-1933-20

October 22, 1999

Oral deposition of ARI LEVINE, held in  
the offices of SCHNADER, HARRISON, SEGAL &  
LEWIS, LLP, Suite 3600, 1600 Market Street,  
Philadelphia, Pennsylvania, commencing at  
11:05 p.m., on the above date, before Sheila E.  
Malen, Registered Professional Reporter and  
Notary Public in and for the Commonwealth of  
Pennsylvania.

ESQUIRE DEPOSITION SERVICES  
15th Floor  
1880 John F. Kennedy Boulevard  
Philadelphia, Pennsylvania 19103  
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## 1 APPEARANCES:

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 Counsel for the Defendant  
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## 1 EXHIBITS

2 NO. DESCRIPTION PAGE  
 3 15 6/15/99 DEHEC to Lebo 115  
 4 16 5/28/99 Faxed letter 118  
 from Levine to Bussey  
 5  
 17 6/21/99 EPA to Levine 127  
 6  
 18 Newspaper article 6/23/99 134  
 7  
 19 Newspaper article 6/25/99 136

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## 1 INDEX

2 WITNESS ----- PAGE

3 ARI D. LEVINE, ESQUIRE  
 4 By Mr. Mullman, Jr. 5

## 7 EXHIBITS

8 NO. DESCRIPTION PAGE

9 1 Letter 10/18/99 Geddie to Poliakoff 6  
 10 2 NEIC Report May 1998 21  
 11 3 Report by General Engineering Labs 49  
 12 4 Newspaper article 9/20/99 53  
 13 5 Letter 11/5/98 77  
 14 6 Letter 12/31/96 Sighter to Jones 83  
 15 7 Letter EPA to Levine 9/28/95 85  
 16 8 Fax 2/28/96 86  
 17 9 EPA Memo 3/19/97 89  
 18 10 Letter 8/13/97 DHEC to Mr. Lebo 94  
 19 11 DHEC to Lebo 4/14/98 97  
 20 12 Letter 12/6/98 Exide to S.C. 101  
 Department of Health and  
 21 Environmental Control  
 22 13 EPA to Levine 1/13/99 107  
 EPA to Howard 12/1/98  
 23  
 24 14 Letter 3/12/99 111

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2 (It is hereby stipulated and  
 3 agreed by and among counsel that the  
 4 sealing, filing and certification are  
 5 waived; and that all objections, except as  
 6 to the form of the question, are reserved  
 7 to the time of trial.)  
 8

9 ARI D. LEVINE, ESQUIRE, after  
 10 having first been duly sworn, was examined  
 11 and testified as follows:  
 12

## 13 EXAMINATION

15 BY MR. MULLMAN:

16 Q. Mr. Levine, I'm not going to go  
 17 through the normal stuff, introductory stuff.  
 18 You're an attorney; you know your rights and you  
 19 know that you can take a break, correct, if you  
 20 need to?

21 A. I do.

22 MR. GEDDIE: Excuse me. Before  
 23 we start, Mr. Levin is a lawyer, as you  
 24 point out, and in a letter that -- in a

5



<p>6</p> <p>1 conversation that you and I had regarding</p> <p>2 his deposition, I pointed out to you our</p> <p>3 concern about inquiring into privileged</p> <p>4 matters. It is not our intention to</p> <p>5 obstruct your examination in any fashion,</p> <p>6 but if at any time either Mr. Levine or I</p> <p>7 think that you're delving into privileged</p> <p>8 matters, we will raise that objection,</p> <p>9 and/or we will confer. If in the event</p> <p>10 that we do confer on that, under Judge</p> <p>11 Herlong's order, then we will advise you</p> <p>12 what we talked about.</p> <p>13 MR. MULLMAN: Sounds good. Do</p> <p>14 you want to make that letter an exhibit?</p> <p>15 MR. GEDDIE: That's fine. Sure.</p> <p>16 Make it Exhibit No. 1. That's a copy of</p> <p>17 the letter.</p> <p>18 MR. MULLMAN: That's fine. I</p> <p>19 don't think that's going to be a problem.</p> <p>20 (Whereupon, Exhibit 1 was marked</p> <p>21 for identification.)</p> <p>22 BY MR. MULLMAN:</p> <p>23 Q. Mr. Levine, when did you first start</p> <p>24 working for Exide?</p>	<p>8</p> <p>1 A. The title changed more to reflect the</p> <p>2 reality of my job responsibilities in or about</p> <p>3 October 1997, I believe, to simply Assistant</p> <p>4 General Counsel. In August 1997 -- excuse me.</p> <p>5 The October would have been October 1996. In</p> <p>6 August 1997, I assumed, as well, the title of</p> <p>7 Director Regulatory Affairs, which made me, in</p> <p>8 addition to my counsel responsibilities, a</p> <p>9 member of the management team responsible --</p> <p>10 decision-making in certain environmental areas.</p> <p>11 Q. And who had that job before August of</p> <p>12 1997?</p> <p>13 A. That job did not exist. It was a</p> <p>14 part of another job.</p> <p>15 Q. Okay. Well, how did your</p> <p>16 responsibilities change from November '94 to</p> <p>17 October '96 and then to August '97?</p> <p>18 A. From November 1994, really through</p> <p>19 August '97, my responsibilities suddenly</p> <p>20 expanded in terms of the scope of legal areas</p> <p>21 for which I was responsible. The change in my</p> <p>22 title in or about October 1996 to simply</p> <p>23 Assistant General Counsel was a recognition of</p> <p>24 that fact. After August 1997, I assumed, in</p>
<p>7</p> <p>1 A. November 1994.</p> <p>2 Q. Did you work for any of Exide's</p> <p>3 subsidiaries before that?</p> <p>4 A. I did not.</p> <p>5 Q. Do you know the names of Exide's</p> <p>6 subsidiaries?</p> <p>7 A. I know the names of some of them.</p> <p>8 Q. Okay. Can you name them?</p> <p>9 A. We're talking current subsidiaries?</p> <p>10 Q. Sure.</p> <p>11 A. General Battery Corporation, Exide</p> <p>12 Holdings Europe, Inc. Excuse me. Exide</p> <p>13 Holdings Europe, SA. Exide Investments, Inc.</p> <p>14 There's another company. I believe the name is</p> <p>15 Exide Company, LLC. Those are the direct</p> <p>16 subsidiaries that I recall at this time.</p> <p>17 Q. And what was your job starting in</p> <p>18 November of 1994?</p> <p>19 A. My title was Assistant General</p> <p>20 Counsel, Environmental Services. I'm sorry.</p> <p>21 Was the question 1994?</p> <p>22 Q. Yes.</p> <p>23 A. Okay.</p> <p>24 Q. And when did you change positions?</p>	<p>9</p> <p>1 addition, what I would call line responsibility</p> <p>2 for certain environmental matters.</p> <p>3 Q. And what certain responsibility --</p> <p>4 environmental matters were they?</p> <p>5 A. Off-site lia -- pardon me. Not</p> <p>6 off-site liabilities. Third-party owned sites,</p> <p>7 which are, or thought to be, contaminated, and</p> <p>8 facilities which the company formerly operated.</p> <p>9 or closed plants.</p> <p>10 Q. Would that include Westgate Trailer</p> <p>11 Park, King Acres, in Greer, South Carolina?</p> <p>12 A. Yes, it would.</p> <p>13 Q. Have you ever been deposed before?</p> <p>14 A. I have.</p> <p>15 Q. Okay. In what case?</p> <p>16 A. I was deposed in a case captioned</p> <p>17 Pep Boys, Manny, Mo and Jack, Incorporated</p> <p>18 versus Exide Corporation, which is pending in</p> <p>19 Superior Court in the State of New Jersey. I</p> <p>20 was also deposed as a 30(b)(6) deponent. I'm</p> <p>21 trying to remember the name of the case. In a</p> <p>22 case brought by RSR Corporation in connection</p> <p>23 with the Avanti, A-V-A-N-T-I, site in</p> <p>24 Indianapolis.</p>

10

1 Q. What were the allegations in that  
2 case?  
3 A. The RSR case?  
4 Q. Uh-huh.  
5 A. RSR has brought suit against a number  
6 of parties claiming that they are potentially  
7 responsible parties under CERCLA for response  
8 costs incurred and to be incurred at the Avanti  
9 site.  
10 Q. And did that have to do with lead  
11 contamination?  
12 A. The Avanti site was a battery -- I  
13 believe a battery smelter. A lead smelter.  
14 Excuse me. So there is lead contamination  
15 present there, yes.  
16 Q. Was the cleanup of lead contaminated  
17 soil?  
18 A. I do not believe there has been a  
19 cleanup of lead contaminated soil there yet.  
20 Q. Do you know what the proposed cleanup  
21 level is?  
22 A. I do not. I'm not certain there is  
23 one yet.  
24 Q. And what state is that? I'm sorry.

1 environment at King Acres, using a site-specific  
2 model approved by EPA and apparently accepted  
3 to DHEC.  
4 Q. What are the different site factors  
5 that you would apply to King Acres that would  
6 be applied in Westgate Trailer Park?  
7 A. I am not familiar in any detailed  
8 sense with the computer modeling. That's one  
9 the reasons we retain outside contractors. In  
10 addition, I would note that the cleanup level  
11 for Westgate Trailer Park was not developed  
12 using a computer model; they were using site  
13 specific data.  
14 Q. What was used?  
15 A. It appears that DHEC developed the  
16 cleanup level for Westgate Trailer Park. It  
17 believes, using EPA modeling data and EPA  
18 guidance.  
19 Q. Well, has EPA agreed with the DHEC  
20 level, established level of 400 parts per  
21 million?  
22 A. EPA has stated that they have no  
23 objection to the application of a 400 parts per  
24 million cleanup level at Westgate Trailer Park

11

1 A. Indiana.  
2 Q. Have you had a chance to look at the  
3 documents that I sent your attorney Wednesday of  
4 this week?  
5 A. I have.  
6 Q. Has Exide performed any remediation  
7 in King Acres?  
8 A. No.  
9 Q. Are they studying the level to be  
10 cleaned up in King Acres?  
11 A. We have retained Advanced Geo  
12 Services Corporation or AGC of Chadds Ford,  
13 Pennsylvania, and AGC has, I believe, completed  
14 the sampling necessary to begin running the  
15 model to determine the answer to that question.  
16 Q. Why wouldn't you use the same cleanup  
17 level that was used in Westgate Trailer Park?  
18 A. We believe that the cleanup level  
19 that was used at Westgate Trailer Park is overly  
20 conservative, perhaps by an order of magnitude,  
21 and --  
22 Q. Okay.  
23 A. -- are attempting to determine what  
24 is protective of human health and the

1 Q. Have you seen a memo from EPA,  
2 authored by Kevin Koporec that states 400 p  
3 per million would be an appropriate level to  
4 clean up Westgate Trailer Park?  
5 A. I have seen a memorandum from  
6 Mr. Koporec. I don't recall whether or not it  
7 has that exact verbiage in it.  
8 Q. And the computer modeling that you  
9 talking about, is that the IEUBK model?  
10 A. Yes, it is.  
11 Q. And it's your understanding that the  
12 IEUBK model was not used to determine the  
13 appropriate cleanup level at Westgate Trailer  
14 Park?  
15 A. It is my understanding that the model  
16 was never actually run, either by DHEC or  
17 EPA.  
18 Q. What about NEIC?  
19 A. Or NEIC.  
20 Q. And did Exide ever hire an expert  
21 consultant to do an IEUBK model at Westgate  
22 Trailer Park?  
23 A. We retained an expert, Advanced  
24 Services Corporation, or AGC, to use what

14

1 represented to us was site-specific data, and  
2 run that data through the model.  
3 Q. In some of that site-specific data,  
4 are there elevated blood lead levels in children  
5 at Westgate Trailer Park?  
6 A. I do not recall there being very many  
7 elevated blood lead levels, if any, but blood  
8 lead data was one of the inputs in the model,  
9 yes.  
10 Q. How would you determine what elevated  
11 is?  
12 A. I would apply the criteria published  
13 by the United States Centers for Disease  
14 Control, which states that an elevated blood  
15 lead is a confirmed blood lead measurement in  
16 excess of  
17 10 micrograms per deciliter.  
18 Q. And when you say confirmed, what does  
19 that mean?  
20 A. It means a venipuncture, analyzed by  
21 a licensed laboratory.  
22 Q. So you would say the finger stick  
23 does not have any relevance?  
24 A. No, I would say it's relevant, but it

15

1 is not conclusive. And more importantly, that's  
2 what the CDC guidance itself says.  
3 Q. Why do you think DHEC uses the finger  
4 stick method?  
5 A. You'd have to ask DHEC why they used  
6 it. I know the finger stick method is used  
7 because it is a relatively inexpensive and  
8 useful screening device.  
9 Q. Has the NEIC finished their report  
10 related to their determination of the source of  
11 the lead at Westgate Trailer Park?  
12 A. I am not aware of any final report  
13 from NEIC or any report from NEIC that addresses  
14 the source of lead from Westgate Trailer Park.  
15 Q. So you're not aware of the draft  
16 report?  
17 A. I am aware of a draft report which  
18 identifies lead levels at Westgate Trailer Park.  
19 I do not recall that that report draws any  
20 conclusions about the source of the lead.  
21 Q. Okay. Have you looked at anything to  
22 prepare for this deposition besides the  
23 documents that were sent to your attorney on  
24 Wednesday?

16

1 A. I have looked at published documents  
2 of the United States government relating to lead  
3 cleanup levels to refresh my memory.  
4 Q. Okay. Which documents?  
5 A. I don't recall the citation, but the  
6 publication by the United States Environmental  
7 Protection Agency and United States Department  
8 of Housing and Urban Development establishing  
9 levels of concern at public housing projects.  
10 I have also looked at the June 3,  
11 1998 proposed rule amending the existing rule, a  
12 rule proposed by EPA, which would have altered  
13 those criteria.  
14 Q. Have you looked at any South Carolina  
15 Department of Health and Environmental Control  
16 documents?  
17 A. I'm not aware that any such documents  
18 exist on cleanup levels for lead.  
19 Q. And are they the lead agency to  
20 determine what the appropriate cleanup is at the  
21 Westgate Trailer Park in King Acres?  
22 A. Yes, they are. *AND*  
23 Q. And do they have the authority to  
24 request Exide to clean up Westgate and King

17

1 Acres at whatever level they want?  
2 A. No, they do not.  
3 Let me clarify my last answer. They  
4 certainly have the authority to require Exide to  
5 conduct a cleanup, assuming the levels are such  
6 as would require a cleanup, but they do not have  
7 the authority to do it at any level they choose.  
8 Q. Okay. And has Exide sued DHEC  
9 related to the remediation in Westgate Trailer  
10 Park?  
11 A. Yes.  
12 Q. Can you tell us what the allegations  
13 of that lawsuit are?  
14 A. I couldn't tell you all of the  
15 allegations, but the thrust of the litigation,  
16 which was filed in Circuit Court, was that DHEC  
17 was violating a Consent Agreement which it  
18 entered into with Exide on or about August 5th  
19 of this year which allowed Exide to proceed with  
20 the cleanup of Westgate Trailer Park.  
21 Q. And how did DHEC violate it?  
22 A. DHEC attempted to take control of the  
23 cleanup when the Consent Agreement specifically  
24 provides that Exide is to perform the cleanup,



18

1 Exide or its contractor.  
 2 Q. And do you know why DHEC did that?  
 3 A. I do not know why DHEC did that.  
 4 Q. That was not mentioned in the  
 5 hearing?  
 6 A. DHEC stated -- well, I should state,  
 7 I was not present at the hearing. It was  
 8 reported to me -- there was information about  
 9 positions DHEC took reported to me by my  
 10 counsel, and that's the only basis of any  
 11 knowledge I have on that subject.  
 12 Q. And who represented Exide in that  
 13 hearing?  
 14 A. Elizabeth Partlow of the Ogletree law  
 15 firm.  
 16 Q. When did DHEC first mention to Exide  
 17 that they wanted Exide to investigate possible  
 18 cleanup of Westgate Trailer Park?  
 19 A. Are you asking when did they first  
 20 request a cleanup or when did they first request  
 21 an investigation?  
 22 Q. Let's say both.  
 23 A. The request for an investigation was  
 24 sometime in late 1995 or early 1996. I don't

1 with that?  
 2 A. There are certainly a significant  
 3 number of sample points that are above 500, b  
 4 I don't recall if the average is over 500.  
 5 Q. So you don't know what percentage is  
 6 below 500?  
 7 A. Not -- no, I don't know the exact  
 8 percentage.  
 9 Q. Okay. Do you know what the  
 10 difference would have been in price, in cost, t  
 11 Exide to clean it up from 400 parts per millio  
 12 to 500?  
 13 A. I don't know the exact number.  
 14 Q. Did the NEIC report say that all of  
 15 Westgate had to be cleaned up, according to  
 16 their study?  
 17 MR. GEDDIE: You mean the draft  
 18 report?  
 19 BY MR. MULLMAN:  
 20 Q. Yes, the draft report.  
 21 A. I don't believe the draft report made  
 22 any conclusions of that type.  
 23 Q. Okay. Why don't we look at that  
 24 report.

19

1 know the exact date. The request for a cleanup  
 2 of Westgate Trailer Park came late winter, early  
 3 spring of 1997. Again, I don't recall the exact  
 4 date.  
 5 Q. And why did it take two years for  
 6 Exide to clean up the site?  
 7 A. Exide submitted a cleanup plan for a  
 8 cleanup of Westgate in the time requested by  
 9 DHEC. That report -- pardon me, that cleanup  
 10 plan was submitted in the month of July 1997.  
 11 DHEC had insisted that the cleanup level be 400  
 12 parts per million, and Exide attempted to  
 13 determine what basis there was for that level.  
 14 Exide spent the bulk of that two-year period  
 15 attempting to obtain an answer to that question.  
 16 Q. Well, did Exide ever offer to clean  
 17 it up at a different level?  
 18 A. Yes, repeatedly.  
 19 Q. Okay. What was that level?  
 20 A. 500 parts per million.  
 21 Q. Okay. What's the average level of  
 22 lead in soil at Westgate Trailer Park?  
 23 A. I do not recall.  
 24 Q. Okay. It's over 500; would you agree

1 MR. GEDDIE: Is that in this  
 2 stack?  
 3 MR. MULLMAN: Yeah, it should  
 4 (Whereupon, Exhibit 2 was marked  
 5 for identification.)  
 6 BY MR. MULLMAN:  
 7 Q. Before Wednesday of this week, had  
 8 you ever seen this report?  
 9 A. The document which has been mark  
 10 Exhibit 2 consists of a cover memorandum f  
 11 Diana Love, Esquire, Director NEIC, to Bru  
 12 Miller at EPA Region 4, then has what appe  
 13 be a number of attachments. I believe that t  
 14 only document I have seen before is the firs  
 15 attachment, which is the first four pages afte  
 16 the blue sheet of paper in Exhibit 2.  
 17 Q. Okay. Have you had any conversat  
 18 with anybody at the NEIC related to this rep  
 19 A. No.  
 20 Q. Have you had any conversations wi  
 21 anybody at the EPA related to this report?  
 22 A. Yes.  
 23 Q. Okay. Who?  
 24 A. Reuben Bussey, Esquire, Assistant



22

1 Regional Counsel, EPA Region 4, and Billy  
 2 Bright, who, I believe, is with the enforcement  
 3 section at EPA Region 4.  
 4 Q. In the introduction, which comes  
 5 right after the top page --  
 6 A. This is on the second sheet after the  
 7 blue sheet?  
 8 Q. Yes.  
 9 A. Okay.  
 10 Q. In the introduction, it says the  
 11 objective was to identify the source of lead  
 12 contamination found in the trailer park soil,  
 13 correct?  
 14 A. It does say that, yes.  
 15 Q. Has Exide ever hired an expert or  
 16 consultant to figure out the source of the lead  
 17 at the trailer park?  
 18 A. No.  
 19 Q. Have they ever done that to figure  
 20 out the source of the lead in King Acres?  
 21 A. No.  
 22 Q. Why not?  
 23 A. We haven't seen any reason to do that  
 24 analysis.

23

1 Q. Okay. Does Exide know the source of  
 2 the lead?  
 3 A. Exide suspects that it is a  
 4 significant contributor to lead levels in both  
 5 King Acres and Westgate.  
 6 Q. Do they know of other contributors?  
 7 A. We know that there are numerous  
 8 anthropogenic sources of lead anywhere in the  
 9 United States, as well as natural sources of  
 10 lead. Lead is a very pervasive compound in the  
 11 environment. And so any of those sources,  
 12 anthropogenic and natural, could contribute to  
 13 lead levels, both at King Acres and at Westgate.  
 14 Q. Do you know what the background level  
 15 of lead in the soil in Greer, South Carolina is?  
 16 A. No.  
 17 Q. Had you ever asked any of your  
 18 experts or consultants to determine what the  
 19 background level of lead is?  
 20 A. I have not.  
 21 Q. Have you mentioned to DHEC or EPA  
 22 that you would like to know that information?  
 23 A. I have not, no.  
 24 Q. Would it surprise you to find out

24

1 that it's 25 to 50 parts per million?  
 2 A. I would have to consult with an  
 3 expert to know whether that's a valid number or  
 4 not.  
 5 Q. Okay. Now, Exide owns several homes  
 6 in King Acres, correct?  
 7 A. Yes, it does.  
 8 Q. Have you determined if any of those  
 9 homes have lead paint in them?  
 10 A. Not to my knowledge.  
 11 Q. So would you agree that lead paint  
 12 probably is not a source of the lead in the soil  
 13 at King Acres?  
 14 A. I would not agree with that, because  
 15 I don't know if any analysis has been made to  
 16 know whether lead paint is a contributing source  
 17 or not.  
 18 Q. And you haven't tried to determine  
 19 that?  
 20 A. I have not, no.  
 21 Q. Let's go to the next page, under  
 22 Results. Right in the middle, it says "For all  
 23 80 samples collected, lead concentrations  
 24 average 812 micrograms per kilogram and range

25

1 from 287 to 2,760 micrograms per kilogram with a  
 2 relative standard deviation of 63 percent."  
 3 That's what it says; correct?  
 4 A. That is what it says.  
 5 Q. Okay. So would you agree that the  
 6 average is 812?  
 7 A. Assuming the analysis is  
 8 representative and was done properly, yes.  
 9 Q. So why does it matter, if Exide is  
 10 going to clean it up, if it's 400 or 500 parts  
 11 per million?  
 12 A. Exide is aware of cleanup levels  
 13 which are in use throughout the United States.  
 14 The 400 parts per million cleanup level is lower  
 15 than most cleanup levels used in residential  
 16 areas. And while we do not, and have never  
 17 taken the position that it is never appropriate  
 18 to clean to 400, we believe that before one  
 19 departs from the norm, there ought to be a  
 20 scientific basis for doing so.  
 21 Q. Okay. But they determined the  
 22 cleanup level by site-specific factors, correct?  
 23 A. At Westgate?  
 24 Q. Yes.



26

1 A. No, they did not.  
 2 Q. They didn't? Do they do that --  
 3 A. I'm sorry. "They" meaning DHEC?  
 4 Q. Yes.  
 5 A. They did not so determine. They did  
 6 not use that method to determine the cleanup  
 7 level at Westgate.  
 8 Q. Well, is one of the reasons why they  
 9 wanted a cleanup level so low, because children  
 10 had had high lead levels in Westgate Trailer  
 11 Park?  
 12 MR. GEDDIE: Counsel, he can't  
 13 speak for DHEC.  
 14 BY MR. MULLMAN:  
 15 Q. Well, have you seen any documents  
 16 that evidence the reason why DHEC wanted you to  
 17 clean up to the level of 400 was because  
 18 children had high lead levels?  
 19 A. I have seen no such document.  
 20 Q. Okay. Is Exide aware that children  
 21 have had elevated lead levels at Westgate  
 22 Trailer Park?  
 23 A. Exide has seen data -- let me  
 24 rephrase that. I have seen data which indicates

1 Westgate Trailer Park.  
 2 Q. Why don't we just talk about the  
 3 Greer facility, then. That might be easier.  
 4 A. I'm sorry. Again, I didn't mean to  
 5 cut you off.  
 6 Q. No problem.  
 7 A. There have been 21 litigation matters  
 8 filed making the allegations you describe  
 9 the vicinity of the Greer complex.  
 10 Q. Related to children?  
 11 A. Allegations brought on behalf of  
 12 children, yes.  
 13 Q. How many property owners in K  
 14 Acres have complained or alleged of lead  
 15 contamination on their property?  
 16 A. When you say "complained," do  
 17 mean have filed complaints in court?  
 18 Q. No. I mean complained to Exide  
 19 either through DHEC or call-in to Exide.  
 20 A. At what point in time?  
 21 Q. Since they took over the facility  
 22 1987.  
 23 A. I don't know how many people have  
 24 called in the 12 years since then.

27

1 that less than five children have elevated blood  
 2 leads defined as I stated earlier, meaning that  
 3 the -- there was some analysis which indicates  
 4 that their blood lead exceeded ten micrograms  
 5 per deciliter. It is my recollection, however,  
 6 that all of those analyses were by finger prick,  
 7 and under the CDC guidance, a finger prick  
 8 evidencing a blood lead greater than ten  
 9 micrograms per deciliter should be followed up  
 10 with a venipuncture and analysis. I do not  
 11 believe that any of the samples that I have  
 12 seen, blood lead samples that I have seen, were  
 13 venipuncture analyses.  
 14 Q. Is Exide involved in litigation which  
 15 includes children from the Westgate Trailer  
 16 Park?  
 17 A. Yes.  
 18 Q. And how many lawsuits have been  
 19 initiated against Exide from people alleging  
 20 that their children had been exposed to amounts  
 21 of lead-causing injury?  
 22 A. Where?  
 23 Q. At Westgate Trailer Park.  
 24 A. I don't know how many are from

1 Q. Okay. Is it more than a dozen?  
 2 A. I can't recall more than a dozen  
 3 names, no.  
 4 Q. Okay. Well, did Mr. Byars ever  
 5 complain, Mr. Bobby Byars?  
 6 A. I believe he did, yes.  
 7 Q. Okay. Did Mr. Poole ever complain  
 8 Thomas Poole?  
 9 A. The name is familiar, but I don't  
 10 recall whether he complained about property  
 11 damage or not.  
 12 Q. Okay. What about Mrs. Sylvia Pitt?  
 13 A. Again, the name is familiar, but I  
 14 don't recall whether Ms. Pitts complained a  
 15 property damage or not.  
 16 Q. Okay. And you don't have any names  
 17 that you can specifically recall? I don't want  
 18 to go through the whole list.  
 19 A. I can recall Ms. Shirley Poteat  
 20 complained about property damage. Obviously  
 21 the plaintiff in this action has complained  
 22 about property damage. And Mr. and Mrs.  
 23 and Mr. and Mrs. Hight, H-I-G-H-T.  
 24 Q. Okay. And Farrell Campbell?

FALSE  
SEE EXHIBITS



30

1 A. Again, I know the name, but I don't  
2 know whether he complained of property damage.

3 Q. Well, I won't go through the whole  
4 list then.

5 Now, we have sent Exide discovery  
6 related to, I believe, the 17 lots that Exide  
7 owns in King Acres. Have you made a diligent  
8 search to find the deeds to find the names of  
9 the people that Exide purchased them from?

10 I'm not done with that. I'm sorry.

11 A. I'm sorry. I have made a diligent  
12 search to identify documents which were called  
13 for by the discovery. I don't recall  
14 specifically what the discovery sought.

15 Q. Okay. One part of the discovery  
16 sought the purchase -- I mean the sellers' name  
17 to Exide, and that was not included, and I  
18 just -- I would imagine that the deeds would  
19 have that. So I'm wondering if you looked for  
20 the deeds, if you found the deeds, if we could  
21 get the names of the sellers.

22 A. My recollection is that we do not  
23 have the deeds for the vast majority of these  
24 properties.

31

1 Q. Well, have you sold those properties  
2 to anybody since you purchased them?

3 A. No.

4 Q. Do you rent those properties to  
5 anybody?

6 A. We rent one property.

7 Q. Going back to the NEIC report, the  
8 next page, which would be, I guess, the fourth  
9 page. You're right on it. In the third line it  
10 says, "In other words, variations in lead  
11 concentrations are too great over short  
12 distances, less than a meter, to distinguish  
13 areas of soil with lead concentrations below  
14 400 micrograms per kilogram with any reasonable  
15 confidence." It says that, correct?

16 A. Actually it says 400 milligram per  
17 kilograms, but otherwise, yes.

18 Q. That's the same as parts per million,  
19 correct?

20 A. Yes. That's my understanding, yes.

21 Q. So what does that sentence mean to  
22 you?

23 A. I'm not sure I can add anything to  
24 what's in the text. I'm not an expert in this

32

1 field.

2 Q. Okay. Well, can you read the next  
3 sentence, then?

4 A. The sentence states, quote,  
5 Therefore, based on a threshold level of  
6 400 milligrams per kilogram, the entire area of  
7 the trailer park must be remediated with the  
8 possible exception of the northeast area, which  
9 has previously undergone remediation activity.

10 Close quote.

11 Q. The previous remediation activity;  
12 has EPA determined that Exide is the responsible  
13 party for that, the cost of that remediation?

14 A. EPA has asserted that Exide is a  
15 responsible party for those costs, yes.

16 Q. And what are the other responsible  
17 parties?

18 A. I believe they've identified the  
19 property owner, Mr. Maxwell. I don't know who,  
20 if anyone else, they have identified.

21 Q. Okay. Is it C.R. Maxwell or Bruce  
22 Reeves that owns Westgate Trailer Park?

23 A. My understanding is that Mr. Maxwell  
24 owns it, but I haven't done a deed search, and

33

1 no one at Exide, to my knowledge, has requested  
2 one, so I can't add any more to that.

3 Q. Okay. The Consent Order that -- I  
4 think it was a '96 Consent Order -- that  
5 determined the remediation activity at Westgate  
6 Trailer Park, did that say how many inches down  
7 cleanup should occur?

8 A. The 1996 Consent Agreement did not  
9 address remediation of Westgate Trailer Park or  
10 any other area, except to state that if it was  
11 determined that cleanup was required, Exide  
12 would agree to perform that cleanup.

13 That was a position that DHEC itself  
14 took with respect to the Westgate Trailer Park,  
15 which is why they insisted that a new Consent  
16 Order, which was the Consent Order entered into  
17 on or about August 5th of this year, be entered  
18 into for that cleanup.

19 Q. Well, how many inches down did Exide  
20 clean it up?

21 A. Approximately three inches was  
22 removed at Westgate Trailer Park.

23 Q. And in the past, has DHEC or EPA  
24 requested Exide clean it up to six or nine



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1 inches?

2 A. I'm not aware of any requests for  
3 cleanup to nine inches by anyone. DHEC did  
4 previously propose a cleanup to a six-inch  
5 depth.

6 Q. Okay. Well, why did they compromise  
7 and go down to three?

8 MR. GEDDIE: How would he know  
9 that, Counsel? He can't speak for DHEC.

10 MR. MULLMAN: Well, he might have  
11 been involved in the compromise.

12 BY MR. MULLMAN:

13 Q. So were you aware of the reasons why  
14 DHEC went from six inches to three inches?

15 A. I don't know what DHEC found to be  
16 persuasive. Obviously, you'd need to ask them  
17 that question. Exide did make available to DHEC  
18 its consultant, AGC, who spoke with technical  
19 people at DHEC concerning the scope of the work  
20 plan.

21 Q. Are you aware of any kind of  
22 agreement between Exide and DHEC or EPA that  
23 states that DHEC would allow Exide to clean it  
24 up to three inches if Exide agreed to clean it

1 MR. MULLMAN: Well, we'll just  
2 skip that then. Don't worry about it.

3 BY MR. MULLMAN:

4 Q. Do you know when Exide plans on  
5 cleaning up the soil in King Acres?

6 A. As soon as we have an approved  
7 cleanup level and an approved work plan from  
8 DHEC.

9 Q. Okay. And has DHEC indicated to  
10 that they want the cleanup to be 400 parts per  
11 million?

12 A. At King Acres?

13 Q. Yeah, King Acres?

14 A. No.

15 Q. Does Exide use the F-A-S-T System  
16 FAST System, with the Phoenix software?

17 A. I don't know who developed -- what  
18 software is in use, but Exide does use a system  
19 called the FAST system.

20 Q. And what does that system do?

21 A. I don't know very much about the  
22 system, except that it is a financial reporting  
23 system used by our branch system.

24 Q. Have you read the depositions in

35

1 up to 400 parts per million instead of arguing  
2 about the 500, so there was a deal made? Are  
3 you aware of that?

4 MR. GEDDIE: I object to the term  
5 "deal."

6 THE WITNESS: And I'm not aware  
7 that there was a deal, as you've described  
8 it.

9 BY MR. MULLMAN:

10 Q. Okay.

11 A. The parties deliberately left the  
12 contours of the work plan to technical experts  
13 talking to one another, not by or through  
14 lawyers.

15 Q. In the NEIC materials, there's an  
16 April 14, 1998 letter to Mr. Lebo from Scott  
17 Wilson.

18 A. I'm sorry. Let me try to find that.

19 Q. Okay.

20 A. April 14, 1998?

21 Q. Yeah, 1998. It should be after these  
22 notes right here.

23 MR. GEDDIE: We don't have Page 2  
24 of it.

1 Michael Smith's case?

2 A. I have perused some of them, but  
3 certainly not all of them.

4 Q. And were you involved in the  
5 production of documents in the Smith case?

6 A. Yes, I was.

7 Q. Okay. And are you aware of any  
8 documents being altered, destroyed or concealed?

9 A. No.

10 Q. You mentioned before that there are  
11 other possible sources for the lead in Westgate  
12 in King Acres, correct?

13 A. That's correct.

14 Q. Okay. Does Exide have any evidence  
15 that the lead in the trailer park or the  
16 subdivision came from other sources besides  
17 Exide?

18 A. I recall that there are analyses of  
19 soil samples at Westgate which show that the  
20 lead levels increased significantly right along  
21 the edge of Old Buncombe Road, B-U-N-C-O  
22 I believe, which would suggest that automobile  
23 exhaust associated with the burning of leaded  
24 gasoline would be a contributing source.



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- 1 Q. Well, could another possible reason  
2 be the transport of lead oxide to and from  
3 Exide?  
4 A. It would depend on what route the  
5 trucks took to get there. But in any event, I  
6 would have to rely upon experts to answer that  
7 question.  
8 Q. Okay. Do you know who at Exide made  
9 the decision to purchase the property in King  
10 Acres?  
11 A. Which property?  
12 Q. Any of the property owned by Exide?  
13 A. I made the decision to acquire  
14 Ms. Poteat's property as part of a settlement in  
15 litigation brought by your firm. I do not know  
16 who made the decision to purchase the other  
17 properties which Exide currently owns at King  
18 Acres.  
19 Q. Have you ever been to the plant?  
20 A. At Greer?  
21 Q. Yes.  
22 A. Yes.  
23 Q. While it was operating?  
24 A. Yes.

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- 1 Q. How many times?  
2 A. While it was operating, two or three  
3 times.  
4 Q. Did you ever see clouds of smoke,  
5 lead dust in the air?  
6 A. Not that I recall, no.  
7 Q. Who is your immediate supervisor?  
8 A. Today?  
9 Q. Uh-huh.  
10 A. John Van Zile. Two words. V-A-N  
11 Z-I-L-E.  
12 Q. And what about back in 1995?  
13 A. In 1995, my direct supervisor was  
14 John Baranski, B-A-R-A-N-S-K-I.  
15 Q. Could you list the members of the  
16 corporate Environmental Resource Department that  
17 had participated in, or were involved in any of  
18 the work done at Westgate or King Acres?  
19 A. The Environmental Resources  
20 Department does not exist today, so I assume  
21 you're talking prior to the restructuring of  
22 that department?  
23 Q. When was that restructuring done?  
24 A. August 1997.

40

- 1 Q. Well, what's the name of that  
2 department now that's responsible for the same  
3 things that the Environmental Resource  
4 Department did?  
5 A. There are two departments that cover  
6 the responsibility that was formerly that of the  
7 Environmental Resources Department. The  
8 Regulatory Affairs Department addresses  
9 liabilities at third-party sites and closed  
10 sites. The Environmental Operations Department  
11 addresses environmental compliance issues,  
12 environmental health and safety compliance  
13 issues at our operating facilities in North  
14 America.  
15 Q. Okay. Who is head of the  
16 environmental operations?  
17 A. Neal Lebo.  
18 Q. And who is head of the Regulatory  
19 Affairs?  
20 A. I am.  
21 Q. Okay. Does Matt Love still work for  
22 Exide?  
23 A. Yes, he does.  
24 Q. Jeff Lead?

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- 1 A. No.  
2 Q. Is he still a consultant?  
3 A. No.  
4 Q. Okay. What about Rick Roganwald?  
5 A. Riengenwald?  
6 Q. Riengenwald.  
7 A. He is no longer employed by Exide.  
8 Q. What about Despina Ferrante  
9 Ioannidas? I-O-A-N-N-I-D-A-S, I think?  
10 A. Ionaiddas. That's as close as I  
11 could come to spelling it. Ms. Ionaiddas is no  
12 longer employed by Exide Corporation.  
13 Did you have a second name you asked  
14 about?  
15 Q. That was Despina Ferrante. That was  
16 her maiden name, I believe?  
17 A. I believe it was, and she is no  
18 longer employed by Exide.  
19 Q. What about Robin Daub?  
20 A. Mrs. Daub is still employed by Exide.  
21 Q. What about Mr. Goberni?  
22 A. I don't know who Mr. Goberni is.  
23 Q. Okay. Can you list the consultants  
24 used by Exide at Greer?

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1 A. Exide currently uses Advanced Geo  
2 Services Corporation in connection with the King  
3 Acres investigation and preparation of work  
4 plan. Exide also uses The Fletcher Group for  
5 on-site work, meaning the former plant site.

6 Q. Has DHEC requested that Exide clean  
7 up on-site?

8 A. DHEC has indicated that a cleanup  
9 will be required, but they have not asked for  
10 that cleanup again.

11 Q. And do you know the highest soil  
12 sample result on-site?

13 A. No.

14 Q. I think I might have asked this, but  
15 let me just ask again. Exide has never asked a  
16 consultant or expert to conduct an IEUBK model  
17 at Westgate or King Acres?

18 A. Exide did ask Advanced Geo Services  
19 Corporation to run the IEUBK model using data  
20 that DHEC provided, which it indicated was  
21 site-specific. And Exide has retained Advanced  
22 Geo Services Corporation to run the data which  
23 has been or is being collected in King Acres  
24 through the same model.

1 same firm.

2 Q. How did Exide attempt to measure or  
3 determine the amount of fugitive emissions  
4 escaping the plant?

5 A. I don't know.

6 Q. Do you know if they ever did attempt  
7 to measure the fugitive emissions from the  
8 plant?

9 A. I don't know.

10 Q. Are you aware that there's air  
11 monitors set up by Exide in King Acres in the  
12 trailer park?

13 A. I know that Exide has high-volume a  
14 samplers, as does DHEC, in the area. Where  
15 they're located, I'm not entirely certain.

16 Q. Okay. And were they established  
17 pursuant to EPA or DHEC protocol?

18 A. I'm not aware of DHEC having any  
19 protocol for the siting or setting of air  
20 samplers. The Exide monitoring devices were  
21 situated consistent with EPA guidance.

22 Q. Are there any quality control  
23 procedures put in place for those air monitor

24 A. I don't know.

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1 Q. Which homes in King Acres are they  
2 sampling, do you know?

3 A. I do not know.

4 Q. Okay. Besides soil sampling, what  
5 else has The Fletcher Group done?

6 A. The Fletcher Group also has conducted  
7 groundwater investigations over time. I don't  
8 recall what other work they have done for Exide.

9 Q. Has RBR, Inc., Risk Based Remedies,  
10 Inc., have they done any work in the Greer  
11 facility or around the Greer facility?

12 A. I don't think so, no.

13 Q. Have you read the investigation  
14 report related to allegations of blood switching  
15 among employees?

16 A. I have read a report of outside  
17 counsel that investigated certain allegations  
18 concerning the blood-sampling program at Greer.

19 Q. And who was that outside counsel?

20 A. Outside counsel was Jack Dodds, with  
21 the law firm of Morgan, Lewis & Bockius. Edward  
22 S.G. Dennis of the same firm may also have been  
23 involved in that, but I know Mr. Dodds was, as  
24 was Dennis Morikawa. M-O-R-I-K-A-W-A. at the

1 Q. Has DHEC or EPA ever complained  
2 Exide about the integrity of the results of  
3 those air monitors?

4 A. Not that I recall.

5 Q. Have they ever complained about the  
6 integrity of the results of the soil samples?

7 A. Not that I recall.

8 Q. Do the soil samples by DHEC match  
9 with The Fletcher Group for the same locat

10 A. I'm not aware of any significant  
11 disparity, if any.

12 Q. Are you aware of a shareholder or  
13 investors' meeting in Bristol, Tennessee in  
14 of 1995?

15 A. No.

16 Q. Have you conducted a diligent sea  
17 for the videotape of that meeting?

18 A. I have conducted a diligent search  
19 for a videotape, as your firm has represent  
20 our prior counsel that such a videotape exi  
21 but I have not been able to identify either  
22 a meeting took place in or about the time  
23 described, a meeting of shareholders occu  
24 or about the time described, or that a vide



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1 of such a meeting exists.  
 2 Q. Okay. Have you asked Arthur Hawkins  
 3 or Alan Gauthier if they were at that meeting?  
 4 A. I asked Mr. Hawkins' assistant to  
 5 review his calendar for that time frame to  
 6 determine whether a shareholders' meeting was  
 7 held in or about that time.  
 8 I don't recall whether I checked with  
 9 Mr. Gauthier's assistant as well.  
 10 Q. Is it Gauthier?  
 11 A. Gauthier, is how he pronounces it.  
 12 Q. Who is your main contact with DHEC?  
 13 A. On what matter?  
 14 Q. On the matter of the cleanup at  
 15 Westgate Trailer Park or King Acres?  
 16 A. Our main contact has been Scott  
 17 Wilson.  
 18 Q. Who is the attorney for DHEC?  
 19 A. Jessica King, Esquire.  
 20 Q. Have you talked to Dr. Marino about  
 21 the blood lead levels in children at Westgate  
 22 Trailer Park and in King Acres subdivision?  
 23 A. We have never been able to obtain a  
 24 meeting with Dr. Marino.

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1 Q. Are you aware of any children in King  
 2 Acres that have alleged lead exposure?  
 3 A. Several of the children on whose  
 4 behalf pending litigation has been brought  
 5 allege that they have been exposed to lead.  
 6 Those complaints do not allege whether the  
 7 exposure exceeds the CDC criteria. I should say  
 8 whether the exposure, if any, exceeds the CDC  
 9 criteria.  
 10 Q. Has Exide paid for the costs of  
 11 remediating Westgate Trailer Park in 1994 to  
 12 EPA?  
 13 A. I believe the cleanup by EPA was  
 14 before 1984, but Exide has reached a settlement  
 15 with EPA on its claim for past costs.  
 16 Q. How many Consent Orders has Exide  
 17 entered into with DHEC related to their  
 18 operation at the Greer facility?  
 19 A. I don't know the number.  
 20 Q. Okay. Is it more than ten?  
 21 A. I don't know.  
 22 Q. Do you receive e-mails from EPA or  
 23 DHEC?  
 24 A. I have received a few e-mails over

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1 time, yes.  
 2 Q. And have they been disclosed to  
 3 plaintiff's counsel in litigation?  
 4 A. Every one of them has been turned  
 5 over to plaintiff's counsel in the Smith  
 6 litigation.  
 7 Q. Okay. Have any of Exide's  
 8 consultants informed Exide that Exide is not the  
 9 source of the lead in Westgate Trailer Park or  
 10 King Acres?  
 11 A. No.  
 12 Q. Do you know what the soil lead levels  
 13 in the Byars' house beyond Bent Creek is, 103  
 14 Bent Creek Drive?  
 15 A. I don't recall the exact level, no.  
 16 Q. Well, do you know if it's over  
 17 500 parts per million?  
 18 A. I believe -- I would need to look at  
 19 the consultant's report to be certain, but my  
 20 recollection is that it is below 500 parts per  
 21 million.  
 22 Q. Okay. Which consultant's report are  
 23 you relying on?  
 24 A. One of the Fletcher Group reports,

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1 which summarizes all of the sampling which has  
 2 been done in King Acres.  
 3 Q. Okay.  
 4 A. That's the report I would need to  
 5 look at, one of those reports.  
 6 Q. Well, have you looked at Jack  
 7 Fanning's report?  
 8 A. I'm sorry, who?  
 9 Q. Jack Fanning.  
 10 A. I don't recognize that name.  
 11 Q. Okay. Let me show it to you. It  
 12 should be in this pile.  
 13 MR. GEDDIE: That's the report  
 14 that was done for your law firm?  
 15 MR. MULLMAN: Yes.  
 16 MR. GEDDIE: General Engineering  
 17 Labs.  
 18 (Whereupon, Exhibit 3 was marked  
 19 for identification.)  
 20 BY MR. MULLMAN:  
 21 Q. Have you given this report to The  
 22 Fletcher Group or any of your other consultants?  
 23 A. Prior to yesterday, I had never seen  
 24 this report.



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1 Q. So you didn't look at this during the  
2 Smith litigation?

3 A. Not that I recall.

4 Q. Okay.

5 A. I note that the date on the signature  
6 page is January 26, 1999. I don't recall the  
7 date of the settlement in the Smith litigation.

8 Q. Well, let's go to Table 1, Soil Test  
9 Results.

10 A. Is that at the end of the text?

11 Q. It's kind of about ten into it.

12 A. I see that page.

13 Q. Okay. Do you see the results for  
14 103 Bent Creek Drive?

15 A. Yes.

16 Q. Do they range from 104 to 2,690 parts  
17 per million?

18 A. That is what Table 1 of this exhibit  
19 says, yes.

20 Q. Okay. Going to the next page. This  
21 is Wipe Test Results from inside the attic of  
22 103 Bent Creek Drive, and it shows, and correct  
23 me if I'm wrong, 944 parts per million in  
24 Mr. Byars' house, correct?

1 lead levels in its soil that exceed the cleanup  
2 level that DHEC has established at Westgate  
3 Trailer Park?

4 A. If the data in the General  
5 Engineering report is correct, the answer is  
6 yes.

7 Q. Okay. And you're not aware of any  
8 report by any consultant such as Rogers &  
9 Calicott, Paul C. Rizzo & Associates, The  
10 Fletcher Group or Jeff Lead, that discusses soil  
11 results at Mr. Byars' property more than 400  
12 parts per million?

13 A. Not that I recall sitting here right  
14 now, but I would need to look at the Fletcher  
15 Group report, which summarizes all prior  
16 sampling data, soil sampling data in the King  
17 Acres area to be certain.

18 Q. Are you aware of any complaints by  
19 Mr. Bobby Byars about surface runoff coming  
20 Exide facility onto his property between 1987  
21 and 1994?

22 A. I have seen documents evidencing  
23 Mr. Byars' concerns, as you describe them, in  
24 the late '80s and early '90s. I don't recall

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1 A. That's what Table 2 states, yes.

2 Q. Okay. Do you have any opinion about  
3 why the lead dust results inside the home would  
4 be so high?

5 A. First, I would need an expert to tell  
6 me whether the analysis is valid; but assuming  
7 it is, I would need an expert to answer that  
8 question.

9 Q. Okay. So you don't have an opinion?

10 A. I have no opinion.

11 Q. Okay. Would you agree that  
12 Mr. Byars' house has higher lead readings in the  
13 soil than what DHEC wants cleaned up at Westgate  
14 Trailer Park?

15 A. I would not, because DHEC has not  
16 told us what the cleanup level is at Westgate  
17 Trailer Park.

18 Q. I thought they determined that they  
19 wanted 400 parts per million?

20 A. I'm sorry. I was thinking King Acres  
21 and Westgate Trailer Park.

22 Could you either restate the question  
23 or can the court reporter read it back?

24 Q. Yeah. Does Mr. Byars' property have

1 the exact dates of those correspondence.

2 Q. Okay. When you say Mr. Byars, th  
3 not the Mr. Byars that's involved in this  
4 lawsuit, though, correct?

5 A. The correspondence I have seen, I  
6 believe, is from Bobby Byars, but I'd need t  
7 look at that correspondence to be certain.

8 Q. Okay. Let me show you this newsp  
9 article.

10 A. Do you want to mark this, just so  
11 it's clear for the record?

12 Q. Yes.

13 (Whereupon, Exhibit 4 was mark  
14 for identification.)

15 BY MR. MULLMAN:

16 Q. This is an article that came from th  
17 Greenville News, September 20, 1999, and  
18 about the attorney, Gary Poliakoff, writing  
19 letter to DHEC. It has a quote in here from  
20 you, Mr. Levine, saying the letter is both  
21 outrageous and incorrect. Do you rememb  
22 telling the reporter that?

23 A. Yes, but I don't recall whether the  
24 quote was given to the reporter for the

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1 Greenville News or the Spartanburg Herald.

2 Q. Okay. Fair enough.

3 A. But the quote is accurate.

4 Q. Okay. Now, what part of that letter  
5 is outrageous and incorrect? And here's the  
6 letter for you.

7 MR. MULLMAN: We'll mark that  
8 as --

9 Actually, why don't we just make  
10 the whole thing 4. That might be easier.  
11 These are the exhibits that went along with  
12 the letter.

13 THE WITNESS: You're referencing  
14 a letter from Poole & Associates. There's  
15 a handwritten date on the top, September 3,  
16 1999. At the bottom of the first page it  
17 says Page 1 of 18, and then there's a  
18 series of documents bound by a rubber band.  
19 As I understand it, for the record, that  
20 will be now part of Exhibit 4?

21 BY MR. MULLMAN:

22 Q. Yes.

23 A. What is both outrageous and incorrect  
24 about the letter from Mr. Poliakoff, is that the

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1 implication that Exide Corporation set out in  
2 any deliberate way to harm anyone, adult or  
3 child, whether working at the facility in Greer  
4 when it was in operation or living in the  
5 vicinity of that facility.

6 Q. And where in the letter does it say  
7 that?

8 A. The last sentence of the first  
9 paragraph states, quote, Our review indicates  
10 two decades of willful abuse by Exide and its  
11 predecessor, and then continues on for the  
12 remainder of the sentence.

13 I understand the term "willful abuse"  
14 in the context of the other allegations made in  
15 the letter to imply what I stated in my previous  
16 answer.

17 Q. Okay. So none of the factual  
18 information, you would say, is incorrect?

19 A. No. I would say the factual  
20 information is incorrect, at least some of it.

21 Q. Okay. Well, which ones?

22 MR. GEDDIE: Counsel, I mean,  
23 what are we doing here? This is -- why  
24 don't you refer him to what's --

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1 MR. MULLMAN: I'm asking him what  
2 he thinks is so outrageous and incorrect  
3 about our letter. I don't see anything  
4 wrong with that. He made the statement.  
5 I'm asking him to back it up.

6 MR. GEDDIE: All right. He just  
7 backed it up.

8 MR. MULLMAN: Well, what's  
9 incorrect in this letter? I mean, all the  
10 documents --

11 MR. GEDDIE: Do you want him to  
12 read an 18-page letter and tell you what he  
13 disagrees with in a letter from your law  
14 partner to the newspaper or to DHEC?

15 BY MR. MULLMAN:

16 Q. Yes.

17 A. Sitting here right now, I can't give  
18 you every single factual inaccuracy in this  
19 18-page letter; however, I do recall at least  
20 some of the inaccuracies. Specifically where  
21 they occur in the letter would take me a few  
22 minutes to locate, but let me take that time to  
23 do that.

24 The letter on Page 3 in boldface

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1 says, boldface in all capitals, says, "Why was  
2 there virtually no enforcement by DHEC and no  
3 attempt to remediate during the above period?  
4 Pardon me. During the above decade?"

5 I'm not sure if that's the section of  
6 the letter, but there's a section of the letter  
7 where the implication is that there was no  
8 effort to address impacted groundwater in the  
9 vicinity of the facility until well past 1987,  
10 when, in fact, the first recovery wells were  
11 installed -- pardon me, the first monitoring  
12 wells were installed in the late '70s or early  
13 '80s under DHEC requirements and supervision,  
14 and the groundwater recovery process began in  
15 the early 1980s. That is one inaccuracy that  
16 comes to mind in this letter.

17 Q. How did you find out about this  
18 letter to DHEC?

19 A. It was provided to me by a reporter  
20 for the Spartanburg Herald, who called and asked  
21 me for my response to it.

22 Q. And did she include for you the  
23 attachments?

24 A. She did not. As I said, she was



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1 calling for a response to a letter that we were  
2 not copied on and was kind enough to at least  
3 give it to us before asking for a response.

4 Q. So you didn't have the exhibits with  
5 you, the attachments?

6 A. At that time, no, and nothing I have  
7 seen since you provided the attachment to  
8 Mr. Geddie in the last week -- I had the chance  
9 to look at them yesterday. Nothing in those  
10 attachments would change my analysis of the  
11 letter.

12 Again, I can't, sitting here right  
13 now, tell you every single inaccuracy. I do  
14 recall detailing them to the reporter at that  
15 time.

16 Q. Oh, so you told the reporter what you  
17 thought was outrageous and incorrect?

18 A. Well, I've already described to you  
19 what I think was outrageous and incorrect. I  
20 also gave her four or five specific examples  
21 where there were factual errors of the type that  
22 I just described relating to the commencement of  
23 the groundwater treatment system.

24 Q. Okay. We can move on then.

1 **no. That would require an expert.**

2 Q. Do you know if Carl Howell was fi  
3 or did he quit the employment of Exide?

4 A. Mr. Howell resigned.

5 Q. Voluntarily or --

6 A. Yes, voluntarily.

7 Q. Who are the other members, beside  
8 Neal Lebo, of the Environmental Operation  
9 Department?

10 A. Mr. Fred Ganster and our new safe  
11 manager, who also reports to Mr. Lebo. H  
12 first name is Kaiya, K-A-I-Y-A, I believe.  
13 don't recall his last name. In addition, the  
14 Industrial Health Laboratory in Philadelphi  
15 reports to Mr. Lebo.

16 Q. And who runs that, Bill Pallies,  
17 P-A-L-L-I-E-S?

18 A. Yes, correct.

19 Q. And is Bill Frear still there?

20 A. Mr. Frear is still employed by Exi  
21 Corporation, yes.

22 Q. Okay. Where is he employed?

23 A. In Reading, Pennsylvania.

24 Q. As what?

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1 MR. MULLMAN: Actually, why don't  
2 we take a break.

3 MR. GEDDIE: All right.

4 (Whereupon, a recess was taken.)

5 BY MR. MULLMAN:

6 Q. Has Exide offered to clean up King  
7 Acres to 500 parts per million?

8 A. **We have, in the past, made that offer  
9 to DHEC, yes.**

10 Q. Okay. And what was DHEC's response?

11 A. That they did not want to address  
12 King Acres until Westgate was taken care of.

13 Q. **Now, Exide owns 17 lots in King  
14 Acres?**

15 A. I know we own more than ten lots. I  
16 don't know the exact number.

17 Q. Now, Exide can voluntarily go and  
18 clean up those lots to whatever level they want,  
19 correct?

20 A. It could.

21 Q. **Do you have an opinion as to what  
22 level of lead in soil is safe for children to  
23 reside or play in?**

24 A. **I do not have an opinion as to that,**

1 A. Director of Global Risk Management

2 Q. Global Risk Management? What is  
3 that?

4 A. Mr. Frear is responsible for managing  
5 all of the company's insurance programs, suc  
6 its workers' compensation, automobile liabili  
7 general liability, property coverage, and in  
8 that function, monitors fire safety, protection  
9 of plant property and equipment, and worke  
10 compensation related issues, as well as some  
11 product liability matters.

12 Q. Do you know the amount of money  
13 has paid the State of South Carolina for fine  
14 related to environmental operations or work  
15 comp violations, OSHA violations, things o  
16 nature, throughout the '80s and '90s? Well,  
17 since 1987, we'll say.

18 A. I'm not certain that -- there are  
19 fines of at least OSHA violations. I know t  
20 have been paid over the years. I don't know  
21 exact amount of --

22 Q. Okay.

23 A. -- OSHA violations by the State of  
24 South Carolina.



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1 Q. What about fines related to DHEC or  
2 EPA?

3 A. I know that there have been civil  
4 penalties assessed by DHEC at various times over  
5 the period you've described. I don't know the  
6 exact amount. I'm not aware of any penalties  
7 paid to EPA during that period.

8 Q. I think I might have asked you this  
9 before. I'm sorry. So you're not aware of any  
10 expert or consultant hired by Exide to determine  
11 the source of the lead in King Acres or Westgate  
12 Trailer Park?

13 A. We have not asked any expert, to my  
14 knowledge, to identify the source of the lead in  
15 either of those locations.

16 Q. And have you hired any expert or  
17 consultant to figure out what a safe level of  
18 lead in soil is for children in Westgate or King  
19 Acres to reside in or play in?

20 A. Yes.

21 Q. Okay. And what was the -- who was  
22 the consultant and what did they say?

23 A. The consultant was Advanced Geo  
24 Services in both cases. At Westgate, the

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1 analysis required AGC to import data from  
2 another site because the data which DHEC  
3 supplied did not allow for input into the IEUBK  
4 model.

5 With that imported data, AGC  
6 concluded that a level between, I believe it  
7 was, 520 and 700 would be protective of human  
8 health in the environment. Excuse me. It would  
9 be protective of blood lead impacts at Westgate.  
10 AGC is in the process of, or I believe actually  
11 has completed, the collection of data necessary  
12 to run the model for King Acres, and, therefore,  
13 there is no answer yet for King Acres.

14 Q. Okay. What other site did they use?

15 A. I don't recall. That would be in  
16 AGC's correspondence with DHEC.

17 Q. And DHEC did not accept that because  
18 the default ratio they used was incorrect?

19 A. DHEC did not review that model.

20 Q. Okay. I'm talking the one for  
21 Westgate, not King Acres.

22 A. That's correct. DHEC did not review  
23 that model.

24 Q. So there was -- I mean, are you aware

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1 of anybody complaining about AGC's default  
2 parameter input of .70 instead of .25?

3 A. I don't recall what the number was.  
4 Mr. Kevin Koporec, EPA Region 4, indicated more  
5 or less that Region 4 would not permit what I  
6 would call imported data for purposes of  
7 calculating a site-specific risk assessment.

8 Q. And you don't know what DHEC's  
9 position on that is?

10 A. DHEC's position is to adopt EPA's  
11 position, as I understand it.

12 Q. Has Exide conducted any study or  
13 health report to determine the health effects of  
14 lead to children in King Acres or Westgate  
15 Trailer Park?

16 A. No.

17 Q. Do you know how many children live in  
18 Westgate Trailer Park and in King Acres?

19 A. No.

20 Q. Do you know how many homes are in  
21 King Acres subdivision?

22 A. I don't recall the exact number.

23 Q. And I think you stated before, Exide  
24 only rents one home in King Acres?

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1 A. That's correct.

2 Q. Do you know who lives in 105 Bent  
3 Creek Drive?

4 A. The lease of that property was  
5 terminated. I don't know what the name of the  
6 tenant was.

7 Q. Okay. What about 107?

8 A. The lease there was terminated, as  
9 well. I don't know the name of the tenant.

10 Q. Do you know when they were  
11 terminated?

12 A. Within the last three to six months,  
13 approximately.

14 Q. Why were they terminated?

15 A. Exide does not wish to be in the  
16 business of leasing real estate for residential  
17 purposes or, for that matter, leasing real  
18 estate at all.

19 Q. Well, do you know what's going to  
20 happen to those homes?

21 A. There are no current plans.

22 Q. Has Exide attempted to sell the  
23 property that is in King Acres subdivision that  
24 they own?



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1 A. Exide has discussed a sale of some of  
2 that property, yes.  
3 Q. Have they attempted to sell the  
4 property where the facility is located, the old  
5 Exide Corporation?  
6 A. We are marketing that property, yes.  
7 Q. When was the first time residents of  
8 King Acres subdivision complained to Exide about  
9 lead contamination?  
10 A. I don't know.  
11 Q. Do you routinely file Freedom of  
12 Information requests to EPA and DHEC?  
13 A. No.  
14 Q. Do you have an agreement with those  
15 two regulatory agencies that you will get  
16 documents that are related to Exide facility in  
17 Greer?  
18 A. No.  
19 Q. Did Exide give any warnings to the  
20 people who leased the homes in King Acres about  
21 the allegations or complaints of lead  
22 contamination?  
23 A. The only lease that I was involved  
24 in, which is the lease to the current tenant, in

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1 answer to that question is yes.  
2 Q. And you don't know who made the  
3 decision to lease the property before you became  
4 the authority to make that decision?  
5 A. No, I don't.  
6 Q. Do you have an opinion as to who  
7 might have given permission to rent the  
8 properties in King Acres?  
9 A. It would be nothing more than a  
10 guess.  
11 Q. Okay. The homes that you own in  
12 Exide -- I mean that Exide owns in King Acres,  
13 have you done wipe samples to figure out the  
14 lead dust levels?  
15 A. I'm not aware of any such sampling.  
16 Q. Do you know what the safe level of  
17 lead dust in a home is?  
18 A. No, I do not. Again, that's  
19 something I would rely on an expert for.  
20 Q. And when you say expert, are you  
21 talking about an outside expert or somebody who  
22 is an expert inside Exide?  
23 A. It depends on the question.  
24 Sometimes I'm relying on in-house experts for

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1 something. Other times, I'll rely on outside  
2 experts like AGC and The Fletcher Group.  
3 Q. Okay. Before, you stated that you  
4 believe Exide is a significant contributor to  
5 the lead contamination in Westgate and King  
6 Acres, correct?  
7 A. Yes.  
8 Q. Do you have an opinion about the  
9 pathways?  
10 A. I do not. I would defer to experts  
11 in those fields.  
12 Q. Have you hired Dr. Shippen to review  
13 the health records of any of the children in  
14 Westgate Trailer Park that had elevated lead  
15 levels?  
16 A. Dr. Shippen was not hired  
17 specifically for that purpose, no.  
18 Q. He is retained by Exide as their  
19 health doctor?  
20 A. He is a medical consultant on an  
21 ongoing basis, yes.  
22 Q. And has he reviewed those records of  
23 those kids in Westgate Trailer Park that allege  
24 that they have been injured by lead?

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1 A. No.  
2 Q. Have you asked Dr. Shippen to do a  
3 review of the medical literature about the  
4 health effects of lead on children?  
5 A. No.  
6 Q. Well, who do you rely on to inform  
7 you about the health effects of lead on  
8 children?  
9 A. I rely upon the published government  
10 standards to determine what levels are safe, as  
11 a general matter, and rely upon experts when  
12 calculating a site-specific level safe for  
13 children in the area.  
14 Q. Well, have you retained any experts  
15 to figure out the health effects of lead on  
16 children in Westgate Trailer Park?  
17 A. No.  
18 Q. What about in King Acres?  
19 A. No.  
20 I assume when you asked about the  
21 health effects of children in various locations,  
22 you're not talking about what level of soil is  
23 safe, but what the impact --  
24 Q. Yes.



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1 A. -- if any, on children is?  
 2 Q. You are exactly correct.  
 3 A. Then my answer is correct.  
 4 Q. And you are relying on AGC to  
 5 determine what the safe level is at Westgate  
 6 Trailer Park for children, correct?  
 7 A. I'm relying on AGC to calculate what  
 8 that number would be, using EPA approved models  
 9 and recognizing that we will not be able to  
 10 implement that level unless DHEC approves of it.  
 11 Q. Okay. Are you aware of any  
 12 conversations or correspondence between Exide  
 13 and Mark Byars?  
 14 A. I'm not aware of any correspondence.  
 15 Q. Do you believe that the lead  
 16 contaminating Mr. Byars' property came from  
 17 Exide?  
 18 A. I don't know. I don't have an  
 19 opinion one way or the other on that.  
 20 Q. You don't know if they're a  
 21 significant contributor to the lead on  
 22 Mr. Byars' property?  
 23 A. I'm not an expert in the field, but  
 24 it would not surprise me if Exide is a

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1 contributor to the levels of lead found on  
 2 Mr. Byars' property.  
 3 Q. You mentioned a compromise between  
 4 Exide and EPA related to the costs of  
 5 remediation done earlier. I thought it was  
 6 1994. I think you thought it was earlier than  
 7 that.  
 8 A. First of all, I don't think I called  
 9 it a compromise.  
 10 Q. Okay.  
 11 A. It was a settlement of a contested  
 12 matter.  
 13 Q. Okay. A settlement?  
 14 A. I believe that the cleanup for which  
 15 the claim -- the cost claim was made, was in  
 16 '93.  
 17 Q. Okay. And the settlement, do you  
 18 know what the settlement was?  
 19 A. Yes.  
 20 Q. Okay. Could you tell us, or is it  
 21 confidential?  
 22 A. I believe it would be public  
 23 knowledge, certainly upon settlement being  
 24 finalized.

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1 Q. Okay. Well, can you tell us what it  
 2 is?  
 3 A. I don't recall the exact number, but  
 4 Exide has agreed to pay approximately \$175,000.  
 5 Again, I just -- I can't recall the exact  
 6 number.  
 7 Q. And that's about half of what they've  
 8 asked Exide to pay?  
 9 A. Approximately.  
 10 Q. You were arguing or discussing with  
 11 EPA that the statute of limitations had run on  
 12 that cost recovery action, correct?  
 13 A. That was one of the arguments we  
 14 asserted as to a part of the past cost claim.  
 15 yes.  
 16 Q. And why wasn't that statute of  
 17 limitations argument successful?  
 18 A. It's not that it wasn't successful.  
 19 It's that Exide made a decision to settle the  
 20 matter with EPA and EPA made a decision to  
 21 settle with us.  
 22 Q. Okay.  
 23 MR. GEDDIE: We'll be glad to  
 24 quote your legal opinion, that it should

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1 have been zero.  
 2 BY MR. MULLMAN:  
 3 Q. Do you know when the lots in King  
 4 Acres were purchased?  
 5 A. Not specifically, no.  
 6 Q. Okay.  
 7 A. Except for Ms. Poteat's property.  
 8 Q. Now, in the discovery responses it  
 9 was stated -- Exide stated that some of the lots  
 10 were purchased because of a groundwater recovery  
 11 system, correct, if you recall?  
 12 A. I do recall, and that is correct.  
 13 Q. Okay. When Exide purchased those  
 14 lots from the previous owners, were those owners  
 15 alleging lead contamination on those lots?  
 16 A. Not to my knowledge.  
 17 Q. And do you know who made the decision  
 18 to purchase the lots, besides Shirley Poteat's,  
 19 which you made?  
 20 A. I don't know.  
 21 Q. You don't know.  
 22 Have you had any correspondence or  
 23 conversations with EPA to attempt to stop the  
 24 final draft of the NEIC?



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- 1 A. No.
- 2 Q. Do you believe that it's appropriate
- 3 that the NEIC conduct a final report?
- 4 A. I don't have an opinion one way or
- 5 the other.
- 6 Q. Has Exide or had Exide had previous
- 7 negotiations with the previous owner of the
- 8 property that is related to this lawsuit?
- 9 A. I don't know.
- 10 Q. How many lawsuits has Exide been
- 11 involved in at the Greer facility related to
- 12 lead contamination or lead exposure?
- 13 A. Prior or pending lawsuits?
- 14 Q. Prior.
- 15 A. I know there are some, I don't know
- 16 the number, workers' compensation claims. Other
- 17 than that, I'm only aware of the Smith case,
- 18 previously brought by your office.
- 19 Q. Okay. Well, you're aware of the
- 20 Miller case, correct?
- 21 A. That's correct, both the Miller and
- 22 Hight cases, and Poteat. That is correct,
- 23 you're right.
- 24 Q. Have you been involved in any of the

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- 1 lead industries association seminars?
- 2 A. No, I have not.
- 3 Q. Do you know how much money Exide
- 4 contributes to the lead industries association?
- 5 A. No.
- 6 Q. Do you know how much political
- 7 contributions Exide gave to South Carolina
- 8 candidates in 1994?
- 9 A. I don't believe Exide made any
- 10 political contributions to South Carolina
- 11 candidates in 1994 or any other year.
- 12 Q. When was the date of closing for the
- 13 Greer facility?
- 14 A. To the best of my recollection, all
- 15 operations in the facility ceased on or about
- 16 December 1996. For several months prior to that
- 17 date, the only operations were formation, was
- 18 formation.
- 19 Q. When did they stop producing
- 20 batteries?
- 21 A. I don't recall the exact date, but it
- 22 was, I think, sometime in the summer of 1996.
- 23 Q. Do you know the other sites that
- 24 Exide has cleaned up the lead around their site,

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- 1 their facility?
- 2 A. In Greer?
- 3 Q. No, around the nation. Are there
- 4 other sites that you had to remediate around the
- 5 facility.
- 6 A. We did a cleanup in a residential
- 7 neighborhood called Cadillac Heights in Dallas,
- 8 Texas. That neighborhood was adjacent to a
- 9 secondary lead smelter owned and operated by
- 10 Dixie Metals Company, which was a subsidiary of
- 11 General Battery Company.
- 12 Q. Do you know what the cleanup level
- 13 there was?
- 14 A. I do not.
- 15 Q. Okay. Any other places?
- 16 A. That's the only cleanup we have
- 17 performed adjacent to one of our own facilities
- 18 that I can recall right now.
- 19 Q. And do you know when that was?
- 20 A. Mid-1990s. I can't recall the exact
- 21 year.
- 22 Q. And --
- 23 A. I'm sorry. Your question was
- 24 off-site cleanup, correct?

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- 1 Q. Yeah.
- 2 A. Not on-site?
- 3 Q. Yeah.
- 4 A. Okay.
- 5 Q. Now, where is Cadillac Heights?
- 6 A. Dallas, Texas.
- 7 Q. Dallas. I thought you said that, I'm
- 8 sorry.
- 9 MR. MULLMAN: I don't know if
- 10 this was included in yours. I think we
- 11 just got this, actually.
- 12 (Whereupon, Exhibit 5 was marked
- 13 for identification.)
- 14 BY MR. MULLMAN:
- 15 Q. I realize that you weren't copied on
- 16 this. I just wanted to ask you if you disagree
- 17 with some of the things in this letter.
- 18 A. This is a two-page document that's
- 19 single spaced. Do you want me to read the
- 20 entire thing?
- 21 Q. Yeah, read it. Not out loud. I'm
- 22 saying, read it for your review.
- 23 A. The first -- it appears to be a
- 24 series or, quote, unquote, string of e-mail



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1 messages. The first one is from Elmer Akin at  
2 Region 4, which I assume means EPA Region 4. It  
3 doesn't say to whom it is intended. It does say  
4 Ralph, so I guess that's Ralph Howard at EPA.

5 MR. GEDDIE: Counsel, where did  
6 you get this?

7 MR. MULLMAN: Freedom of  
8 Information Act request.

9 THE WITNESS: Well, taking them  
10 one at a time, the first message is the  
11 only one I've read so far. I understand  
12 that to be EPA's position; that is to say  
13 that -- well, no, strike that. I would not  
14 say that. I understand it to be the  
15 position of some individuals at EPA. I  
16 believe it is inconsistent with EPA's own  
17 guidance.

18 BY MR. MULLMAN:

19 Q. Okay. Well --

20 A. That's just the first --

21 Q. Yeah. I'll quicken the process here,  
22 because you don't have to read it all. Down  
23 here, the -- actually, the second to the last  
24 paragraph.

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1 A. On the first page?

2 Q. On the first page. "As to why --"  
3 That one I'm most interested in.

4 A. Okay. This is from Ralph Howard at  
5 EPA. It says -- the first word of the text is  
6 Reuben, so I assume it's to Reuben Bussey at  
7 EPA, in-house counsel.

8 Okay. I've read that paragraph.

9 Q. Okay. Does it indicate to you that  
10 one of the factors that DHEC and Mr. -- I mean  
11 Dr. Marino is using for the cleanup level is  
12 that there are actual significantly elevated  
13 blood levels at Westgate Trailer Park?

14 A. The phrase, quote, actual  
15 significantly elevated blood lead levels here,  
16 close quote, appears in the text, yes.

17 Q. I know we were discussing the factors  
18 before, and I asked you were one of the factors  
19 DHEC was using the fact that there were elevated  
20 lead levels in children. Does this change your  
21 mind now, that that was one of the factors that  
22 DHEC was looking at?

23 A. As I think I said the last time, DHEC  
24 was looking at blood lead levels, but never ran

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1 the model itself and never asked EPA to run the  
2 model using those blood lead levels. The blood  
3 lead levels which DHEC did provide to us in the  
4 summer of 1998 did not support a lower cleanup  
5 level, according to AGC's analysis.

6 Q. Okay.

7 A. So I guess the short answer to your  
8 question is, it does not change my answer.

9 Q. Okay. Does EPA, from this paragraph,  
10 at least, sound like they're agreeing with DHEC,  
11 that they prefer the 400 parts per million  
12 level, as we do?

13 MR. GEDDIE: I object to the form  
14 of the question.

15 THE WITNESS: Mr. Howard  
16 states -- seems to state as much in this  
17 e-mail message. Whether Mr. Howard either  
18 is authorized or qualified to speak for  
19 EPA, I can't say.

20 BY MR. MULLMAN:

21 Q. Okay.

22 A. And as I've said, to the extent that  
23 Mr. Howard takes that position, I think it's  
24 inconsistent with EPA's own written guidance

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1 documents.

2 MR. MULLMAN: Actually, I don't  
3 know if I'm going to make that an exhibit  
4 since it's not to or from him.

5 MR. GEDDIE: It's already marked,  
6 so you might as well leave it.

7 MR. MULLMAN: Sounds fine. Might  
8 as well leave it.

9 BY MR. MULLMAN:

10 Q. Have you looked for a document called  
11 Palmetto Air and Water Balance Report, Spring of  
12 1994?

13 A. Could you give me the name again?

14 Q. The Palmetto Air and Water Balance  
15 Report, Spring of 1994.

16 A. I don't recall hearing that name  
17 before, so I can't answer.

18 Q. Have you looked for the Soil Erosion  
19 and Sedimentation Plan that was requested in the  
20 Smith litigation?

21 A. If it was requested in the Smith  
22 litigation, I attempted to locate it.

23 Q. Okay.

24 MR. GEDDIE: Counsel, if you have

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1 a list of documents that you think were not  
2 produced in prior litigation, if you'll  
3 give me that list, I'll assure you, we will  
4 make a renewed effort to find it.  
5 MR. MULLMAN: I think we -- part  
6 of our request to produce has a list of  
7 those documents.  
8 MR. GEDDIE: Okay.  
9 MR. MULLMAN: And they're not due  
10 for another week yet or two.  
11 BY MR. MULLMAN:  
12 Q. Are you familiar with this  
13 Preliminary Site Assessment by EPA, December  
14 1996?  
15 A. I have seen this as recently as  
16 yesterday, because this is, I believe, one of  
17 the documents that you produced to Mr. Geddie,  
18 but I do not recall seeing it prior to that.  
19 prior to yesterday.  
20 Q. Okay. On Page 4.  
21 MR. GEDDIE: This is No. 6?  
22 MR. MULLMAN: Yes. This will be  
23 No. 6.  
24 (Whereupon, Exhibit 6 was marked

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1 for identification.)  
2 THE WITNESS: Page 4, including  
3 the first page?  
4 BY MR. MULLMAN:  
5 Q. Yes.  
6 A. I see that page.  
7 Q. Okay. It says here, on the third  
8 paragraph after the Introduction/Executive  
9 Summary, "Because of high levels of lead  
10 detected on-site, the Westgate Mobile Home site  
11 would normally receive a high priority for  
12 further Federal Superfund activity," correct?  
13 Is that what it states?  
14 A. That's what it states.  
15 Q. And then it goes on to talk about the  
16 remedial investigation performed by Exide  
17 Corporation under DHEC Consent Order 96-12-HW.  
18 Do you know what that remedial investigation  
19 said?  
20 A. In general terms, yes, not  
21 specifically.  
22 Q. Okay. Generally, what did it say?  
23 A. It identified lead levels in the --  
24 I'm assuming that's the remedial investigation

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1 report for Westgate, which was submitted to DHEC  
2 by Exide in January 1997.  
3 Assuming that's the case, that report  
4 identified the sampling and analysis methods  
5 that were employed by, I believe it was, The  
6 Fletcher Group, and identified lead levels that  
7 were determined following those procedures.  
8 Q. Okay. And would that be a CERCLA  
9 site, Federal Superfund? Is that what they mean  
10 by that?  
11 A. I don't recall whether the report was  
12 submitted as a Federal Superfund or State  
13 Superfund program.  
14 Q. So before giving this document, or  
15 getting this document from Gray Geddie the other  
16 day, you've never seen this or you don't recall  
17 it?  
18 A. I don't believe I've seen this  
19 document before, no.  
20 Q. Okay. Well, then, I'm not going to  
21 ask you about it then.  
22 MR. MULLMAN: It might be easier  
23 if we take the break now.  
24 MR. GEDDIE: That's fine.

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1 (Whereupon, a luncheon recess was  
2 taken from 12:55 until 2:05 p.m.)  
3 MR. MULLMAN: Let's make this --  
4 this is a September 28, 1995 letter from  
5 the EPA to Mr. Levine. We'll make this  
6 Plaintiff's Exhibit 7.  
7 (Whereupon, Mr. Robert L.  
8 Collings, Esquire joined the deposition.)  
9 (Whereupon, Exhibit 7 was marked  
10 for identification.)  
11 BY MR. MULLMAN:  
12 Q. Do you remember receiving this  
13 document?  
14 A. I don't remember receiving it, but it  
15 is addressed to me and I probably did get it on  
16 or about the date.  
17 Q. Okay. Do you agree with the EPA's  
18 assertion that the Exide facility located in  
19 Greer, South Carolina violated the Clean Air  
20 Act's New Source Performance standards?  
21 A. No, I do not.  
22 Q. Okay. And why not?  
23 A. I do not believe that a source  
24 becomes a New Source under subpart KK of the Air



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1 Regulations Part 6040 CFR.  
 2 Q. Okay. Did you enter into a Consent  
 3 Order related to this alleged violation?  
 4 A. With EPA?  
 5 Q. Yes.  
 6 A. No.  
 7 Q. Okay. All right. Let's proceed.  
 8 MR. MULLMAN: This will be  
 9 Exhibit No. 8.  
 10 (Whereupon, Exhibit 8 was marked  
 11 for identification.)  
 12 THE WITNESS: My answer with  
 13 regard to EPA may have been incomplete. I  
 14 do not take the -- it is not my position  
 15 that an old source can never become a new  
 16 source. As to the circumstances under  
 17 which an old source can become a new  
 18 source, I differ with the position of the  
 19 EPA as stated in this letter.  
 20 BY MR. MULLMAN:  
 21 Q. And this is a February 28, 1996 fax  
 22 which includes your name. Do you remember  
 23 seeing this fax and this letter from Neal Lebo?  
 24 A. I don't remember receiving it, but

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1 I'm sure I did receive it, based on the cover  
 2 page.  
 3 Q. Okay. The next page is a draft  
 4 letter to DHEC, Mr. Tilford.  
 5 A. I'm sorry. If I could note, the  
 6 cover page says pages including cover nine, and  
 7 I think there were six pages here, so it may  
 8 just be that -- it seems there's something  
 9 missing, but as I say, I'm sure I received  
 10 whatever was faxed from Mr. Lebo.  
 11 Q. I think that the end is just the  
 12 first page of the Consent Order. I don't think  
 13 we have the whole Consent Order.  
 14 A. Okay.  
 15 Q. The second page talks about their Air  
 16 Systems testing at Exide Corporation's  
 17 manufacturing facility on stacks No. 2, 3, 4 and  
 18 5. Do you recall those test results in this  
 19 testing done?  
 20 A. I recall that there was testing done  
 21 in or about this time. I don't recall what the  
 22 results were, specifically, other than what the  
 23 result was.  
 24 Q. Okay. And this test result, do you

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1 know when it was done, these tests?  
 2 A. I have no independent recollection,  
 3 but I would assume it was done shortly before  
 4 July 31, 1995, which is the date that the draft  
 5 was received.  
 6 Q. Okay. And did the production  
 7 decrease between July '94 and July '95?  
 8 A. I don't know.  
 9 Q. Okay. On the second paragraph, it  
 10 states, quote, It should be noted that, while  
 11 production during all test runs was  
 12 representative of current plant operations, the  
 13 daily production requirements on the Greer  
 14 facility have been significantly curtailed over  
 15 the past six months. Would you agree that  
 16 that's what it says?  
 17 A. I have no independent knowledge. I  
 18 have no reason to doubt that that's the case.  
 19 Q. Were tests done on the stacks when  
 20 production was at its maximum?  
 21 A. I don't know. It would -- it would  
 22 state what -- the production level would be  
 23 stated in the report of the consultant who did  
 24 the tests.

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1 Q. Okay. Do you know if Air Systems  
 2 Testing, the consultant that is mentioned in  
 3 here, ever informed Exide that its emissions  
 4 violated the EPA and DHEC standards?  
 5 A. I don't believe they ever so  
 6 communicated, and I don't believe that, in fact,  
 7 the facts presumed in your question are true.  
 8 Q. Okay.  
 9 MR. MULLMAN: This will be No. 9.  
 10 MR. GEDDIE: What's the date on  
 11 that letter?  
 12 MR. MULLMAN: It's March 19,  
 13 1997, EPA.  
 14 (Whereupon, Exhibit 9 was marked  
 15 for identification.)  
 16 BY MR. MULLMAN:  
 17 Q. I notice that Page 4 is not attached.  
 18 I think it wasn't included and then they faxed  
 19 it to us or something.  
 20 Have you ever talked to Winston Smith  
 21 at EPA?  
 22 A. No.  
 23 Q. Okay. What about Russ Wright?  
 24 A. No.

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1 Q. Okay. Have you ever seen this  
2 document before?  
3 A. I saw it yesterday, because it was  
4 among the documents which your office produced  
5 to Mr. Geddie, but I had not seen it previously.  
6 Q. Okay. The third line states, "The  
7 company --" and I presume they mean Exide --  
8 "has completed a Remedial Investigation dated  
9 January 1997 in which they drew several  
10 conclusions; mainly, that Exide is not  
11 responsible for lead deposition in Westgate."  
12 Do you agree with that  
13 characterization of remedial investigation done?  
14 A. No.  
15 Q. Okay. Why do you disagree with it?  
16 A. The report did not state that Exide  
17 was not responsible for lead deposition in  
18 Westgate. The report stated that the wide  
19 dispersion of lead levels across the Westgate  
20 property made a determination of all of the  
21 sources of the lead difficult.  
22 Q. Okay. Well, what could be done to  
23 figure out who is responsible for the lead at  
24 Westgate Trailer Park?

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1 A. You would have to ask an expert in  
2 that field.  
3 Q. Okay. The next page talks about a  
4 report: Proposal for Identifying the Specific  
5 Source of Lead Emissions in Westgate Trailer  
6 Park in Greer, South Carolina, correct?  
7 A. That's what it says, yes.  
8 Q. And can you read the objective on the  
9 next page?  
10 A. Do you want me to read what's written  
11 here?  
12 Q. Yes, please.  
13 A. Quote, Identify the source of lead  
14 (Pb) deposited within the Trailer Park so that  
15 the responsible party can be identified and so  
16 remediation can be undertaken as needed by said  
17 responsible party. End of quotation.  
18 Q. Why would Exide agree to remediate  
19 Westgate before the NEICs final report was done,  
20 since their objective is to find out who the  
21 responsible party is?  
22 MR. GEDDIE: If you know.  
23 THE WITNESS: Exide did proceed  
24 with the cleanup and the investigation of

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1 Westgate because, as I stated earlier, we  
2 suspect that we are a contributing source  
3 of the lead present at that location.  
4 BY MR. MULLMAN:  
5 Q. Okay. Does Exide or do you believe  
6 that there's another contributing source that is  
7 known?  
8 A. As I stated earlier, there are a  
9 number of possibilities, given the prevalence of  
10 lead in the environment all over the country, if  
11 not all over the world.  
12 Q. Well, can you name some of those  
13 possibilities?  
14 MR. GEDDIE: He's already done it  
15 once. I mean, you want to do it again?  
16 MR. MULLMAN: I didn't think he  
17 did it.  
18 BY MR. MULLMAN:  
19 Q. I didn't think you named all the  
20 sources.  
21 A. No, I said earlier there could be --  
22 well, I can't name all of them, but I can name  
23 some of them. There are anthropogenic sources,  
24 including emissions from lead contaminated --

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1 not lead contaminated -- leaded gasoline. There  
2 may be other anthropogenic sources, and lead is  
3 a pervasive compound in the natural environment.  
4 Those are two, as I mentioned earlier, possible  
5 contributing sources.  
6 Q. Do you think --  
7 A. It could also be people working on  
8 automobiles, their own, or those of other  
9 people, that could contribute to the presence of  
10 lead.  
11 Q. And are you relying on any consultant  
12 or expert for those, or is that something that  
13 you have knowledge of?  
14 A. Over the years of reading  
15 consultants' reports, I am aware that all of  
16 those sources can be sources of lead at a  
17 particular location.  
18 In addition, as I mentioned earlier,  
19 there was sampling that was conducted at  
20 Westgate along Old Buncombe Road which showed  
21 elevated levels along the roadside as compared  
22 to the rest of the property.  
23 (Whereupon, Exhibit 10 was marked  
24 for identification.)



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1 BY MR. MULLMAN:  
2 Q. This is an August 13, 1997 letter to  
3 Mr. Lebo. Now, you're not copied on this, but I  
4 wanted to ask you if you've ever seen this  
5 letter before or if you've ever talked to  
6 Mr. Lebo about this letter before?  
7 A. I believe I have seen this letter  
8 before, but not at the time it was sent to  
9 Mr. Lebo.  
10 Q. Okay. No. 1 says, "The state has  
11 provided Exide with justification for the  
12 400 milligrams/kilograms cleanup level in Gary  
13 Stewart's letter dated July 1, 1997."  
14 That's what it says, correct?  
15 A. That is what it says.  
16 Q. Do you disagree that the state gave  
17 Exide justification to 400 at that time?  
18 A. I disagree with that statement. They  
19 had not given such justification at that time.  
20 Q. Do you recall that Gary Stewart's  
21 letter dated July 1, 1997 said that they believe  
22 that gave justification?  
23 A. I'm sure I've seen Mr. Stewart's  
24 July 1 letter, but I don't recall specifically

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1 what that letter says.  
2 Q. Okay. No. 2 states, "The depth of  
3 the soil removal should be at least six inches,"  
4 correct?  
5 A. That's what it says.  
6 Q. Do you know why DHEC changed their  
7 mind and just allowed Exide to do three inches?  
8 A. I don't know that DHEC just allowed  
9 Exide to do anything.  
10 Q. You know what I mean. Do you know  
11 why they changed it from six inches to three  
12 inches?  
13 A. As I said earlier, first of all, I  
14 don't know what the thinking of DHEC's mind was,  
15 but we did make our consultant available to  
16 DHEC's technical personnel, and there was a  
17 series of conversations between our consultants  
18 and DHEC's personnel as to the merits of the  
19 work plan that we had submitted.  
20 Q. The soil sampling that The Fletcher  
21 Group performed or conducted on behalf of Exide,  
22 is that to three inches, six inches, or nine  
23 inches, to your knowledge?  
24 A. I don't recall. I'd have to look in

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1 the Fletcher Group report.  
2 Q. The last line on the first page says,  
3 "Exide has conducted all possible investigation  
4 options to identify the source of the lead on  
5 Westgate Trailer Park."  
6 Do you agree with that statement?  
7 A. No.  
8 Q. Why not?  
9 A. I don't think that we have focused  
10 very much, if at all, on identifying other  
11 sources of lead.  
12 Q. Okay. I don't think it says other  
13 sources. It says "the source" of the lead.  
14 A. Well, I don't believe there is a  
15 single source of the lead.  
16 Q. Okay. Well, has Exide conducted all  
17 possible investigation options to identify any  
18 source at the Westgate Trailer Park?  
19 A. No.  
20 Q. Okay. Moving right along.  
21 MR. MULLMAN: April 14, 1998  
22 letter. This is Exhibit No. 11. This is  
23 to Mr. Lebo.  
24 (Whereupon, Exhibit 11 was marked

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1 for identification.)  
2 BY MR. MULLMAN:  
3 Q. Once again, you weren't copied on  
4 this, but do you remember seeing this?  
5 A. I have seen this letter before, yes.  
6 Q. Okay. In the first line, first  
7 paragraph, it talks about the two reasons why  
8 DHEC wants cleanup to be 400 parts per million.  
9 It says, "First, 1996 surface soil sampling  
10 conducted by The Fletcher Group for Exide, as  
11 well as other sampling data, indicate the  
12 presence of lead contamination in excess of  
13 400 parts per million in large delineated areas  
14 of the Trailer Park."  
15 Do you agree with that, that The  
16 Fletcher Group sampling shows lead contamination  
17 in excess of 400 parts per million?  
18 A. The data presented in The Fletcher  
19 Group report does show that there are sampling  
20 points in excess of 400 ppm at Westgate.  
21 Q. And would that be true for King  
22 Acres, too?  
23 A. At certain locations, yes.  
24 Q. Okay. One of those locations being



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1 Mark Byars' property?  
 2 A. I don't recall.  
 3 Q. Then it says, "Secondly,  
 4 site-specific data indicates the presence of a  
 5 continuing exposure pathway as evident by  
 6 elevated blood lead levels in residents several  
 7 years after the 1995 EPA removal action."  
 8 Do you agree with that statement?  
 9 A. No.  
 10 Q. Okay. Why not?  
 11 A. Because we have not received any  
 12 data, that I'm aware of, that shows persistent  
 13 elevated blood lead levels in residents at  
 14 Westgate Trailer Park.  
 15 Q. Did Exide ever go out to Westgate and  
 16 perform any blood lead testing on the residents  
 17 there?  
 18 A. No.  
 19 Q. Okay. Did DHEC ever ask them to do  
 20 that?  
 21 A. No.  
 22 Q. Are you aware of the public lead  
 23 awareness program that was recommended to be  
 24 done by DHEC in 1989 through 1991?

1 answered.  
 2 BY MR. MULLMAN:  
 3 Q. Okay. Well, why not? Why didn't  
 4 Exide offer to help the state determine if the  
 5 were children getting injured at Westgate  
 6 Trailer Park because of lead?  
 7 A. First, the state had conducted some  
 8 blood lead sampling. Secondly, the state, I  
 9 don't believe, ever asked Exide to fund a state  
 10 health initiative.  
 11 Q. Okay. The last two lines in the  
 12 second paragraph, the one right before that  
 13 talks about justifying setting the higher  
 14 cleanup goal than 400. Then it goes on to  
 15 state, quote, However, since an exposure route  
 16 still exists and there's a documented history  
 17 of elevated blood lead levels in Westgate  
 18 residents, there's no justification at this  
 19 site. Therefore, Exide Corporation must conduct  
 20 the cleanup to a level of 400 parts per million  
 21 total lead."  
 22 Is that what it says?  
 23 A. That's what it says.  
 24 Q. Okay. Now, do you think that that

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1 A. My recollection is there was some  
 2 correspondence between DHEC and Exide personnel,  
 3 but the content of that correspondence, I don't  
 4 recall, independently.  
 5 Q. Well, would it be fair to say that  
 6 DHEC was, at least in 1989 through '91,  
 7 concerned about the lead at Westgate and the  
 8 effect of the lead on children?  
 9 MR. GEDDIE: I object to the form  
 10 of the question.  
 11 THE WITNESS: I don't recall,  
 12 independent of looking at the  
 13 correspondence, what DHEC's concerns were,  
 14 other than that DHEC indicated that they  
 15 did not have funding available to do some  
 16 of the things that were under discussion.  
 17 BY MR. MULLMAN:  
 18 Q. And did Exide offer money to help  
 19 them fund that?  
 20 A. Not that I recall.  
 21 Q. Okay. Why not? I mean, wouldn't  
 22 Exide be concerned about the children at  
 23 Westgate Trailer Park?  
 24 MR. GEDDIE: That's not what he

1 justification to Exide to clean it up to 400  
 2 parts per million? They're saying that, one,  
 3 exposure route still exists; and two, that  
 4 there's a documented history of elevated blood  
 5 lead levels. Would you say that that gives  
 6 Exide justification to clean it up to 400 parts  
 7 per million?  
 8 A. No.  
 9 Q. Okay.  
 10 (Whereupon, Exhibit 12 was marked  
 11 for identification.)  
 12 BY MR. MULLMAN:  
 13 Q. This is a November 6, 1998 letter to  
 14 Mr. Wilson from Mr. Lebo, and it shows that  
 15 were copied on this. Do you remember receiving  
 16 a copy of this letter?  
 17 A. I don't remember it, but I have no  
 18 doubt that I received it.  
 19 Q. Okay. Now, this is talking about a  
 20 off-site soil investigation of King Acres,  
 21 correct?  
 22 A. Yes.  
 23 Q. And Exide's position here is that  
 24 until cleanup level at the trailer park is



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1 resolved, there would be no purpose to proceed  
2 with the expanded study in King Acres, correct?  
3 That's what it says?  
4 MR. GEDDIE: Well, the letter  
5 speaks for itself.  
6 BY MR. MULLMAN:  
7 Q. Okay. Well, I just wanted to -- we  
8 can read the letter then.  
9 All right. The second paragraph, the  
10 fourth line, it says, "However, until this  
11 fundamental issue is resolved, it would serve no  
12 purpose to proceed with an expanded study in  
13 King Acres," correct?  
14 A. That's what it says.  
15 Q. Now, why wouldn't it still serve the  
16 purpose to sample King Acres to find out the  
17 levels?  
18 A. Because you'd end up duplicating the  
19 work, potentially, by having to go back and  
20 resample once the cleanup goal was established.  
21 It would not move the ball forward in  
22 determining what the cleanup level is.  
23 Q. But after they determined the cleanup  
24 level at Westgate, you're still doing the

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1 duplicative work, aren't you? I mean, you're  
2 not agreeing to do cleanup of 400 in King Acres,  
3 right?  
4 A. I'm not sure what the question is.  
5 I'm sorry.  
6 Q. Okay. Well, let's go back. Why did  
7 Exide not want to proceed with an expanded study  
8 in King Acres?  
9 A. As a general matter, when there's  
10 already data at a site, a further delineation  
11 is -- could very well be a waste of time and  
12 money without knowing what we're delineating to,  
13 and DHEC has defined the delineation criteria as  
14 being equivalent to, or equal to, rather, the  
15 cleanup criteria. And so, until we know what we  
16 have to delineate to, it seems to be, as I say,  
17 a waste of time and money, and, more  
18 importantly, it does not advance the ball to  
19 getting cleanup done.  
20 Q. Okay. So you wanted to resolve the  
21 cleanup lead level at Westgate first?  
22 A. At Westgate or King Acres?  
23 Q. Westgate.  
24 A. Yes, sir. Yes, that's correct.

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1 Q. Now, since that issue has been  
2 resolved, and correct me if I'm wrong, that  
3 issue has been resolved? Exide has cleaned it  
4 up to 400 parts per million?  
5 A. Correct.  
6 Q. How does that affect the cleanup of  
7 King Acres?  
8 A. Exide's position, as I stated before,  
9 is that a cleanup to 400 parts per million is  
10 overly protective, and that a site-specific risk  
11 assessment should be performed for King Acres.  
12 as it should have been performed for Westgate.  
13 And DHEC has allowed us the time to do that risk  
14 assessment.  
15 Q. Okay. But isn't it good that DHEC  
16 wants to be overprotective of people, including  
17 children, in King Acres and Westgate Trailer  
18 Park?  
19 MR. GEDDIE: I object to the form  
20 of the question.  
21 BY MR. MULLMAN:  
22 Q. And isn't that something that they're  
23 supposed to be doing?  
24 MR. GEDDIE: Same objection.

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1 How can he speak to what DHEC ought to be  
2 doing?  
3 MR. MULLMAN: He negotiates with  
4 DHEC.  
5 MR. GEDDIE: You and I live in  
6 the state, too, but we can't speak for  
7 DHEC.  
8 BY MR. MULLMAN:  
9 Q. Well, wouldn't Exide want to be  
10 overly protective of the children in Westgate  
11 Trailer Park and King Acres, especially if  
12 they're a significant contributor to the lead?  
13 A. Exide wants to be protective of all  
14 persons, as well as the environment. We do not  
15 think it is necessary to be overly protective  
16 when there are sound scientific models which  
17 have been developed and endorsed by EPA which  
18 allow one to determine safe levels, that  
19 themselves incorporate many levels of risk  
20 reduction, such as safety factors, and,  
21 therefore, feel there's no need to go above and  
22 beyond those factors endorsed by EPA of insuring  
23 that there's a safe level for human health and  
24 the environment.



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1 Q. Now, I noticed you mentioned EPA, but  
2 isn't DHEC the lead agency here?  
3 A. DHEC is the lead agency.  
4 Unfortunately, DHEC has not adopted any  
5 standards by which one could determine a cleanup  
6 level.  
7 Q. And DHEC could request Exide to clean  
8 it up to 100 parts per million, correct?  
9 A. If they have a sound basis in  
10 science, fact, and law, sure.  
11 Q. Okay. So considering that Exide  
12 believes that 400 parts per million is overly  
13 protective, why did they agree to clean it up to  
14 that level?  
15 A. We recognized that DHEC was  
16 determined at that point to proceed, however  
17 much we thought their proceeding was with or  
18 without justification, and recognized that we  
19 could achieve the objectives of the cleanup both  
20 more quickly and more efficiently, and so  
21 decided to do so.  
22 Q. Okay. Well, does DHEC seem  
23 determined to fund the cleanup at King Acres at  
24 400 parts per million?

1 A. I did receive it. I don't  
2 specifically recall whether it was attached to  
3 this or not, but if it says in the letter it  
4 was, I'm sure it was.  
5 Q. Okay. On the second page --  
6 A. Of the letter?  
7 Q. -- of the letter, yes. The second to  
8 the last paragraph says, quote, EPA has  
9 designated Westgate a 'low priority site,'  
10 largely because the State of South Carolina  
11 the lead agency and Exide has indicated a  
12 willingness to clean up the contamination.  
13 Is that what it says?  
14 A. That's what it says.  
15 MR. GEDDIE: That's what it say  
16 MR. MULLMAN: Okay.  
17 MR. GEDDIE: Yep.  
18 BY MR. MULLMAN:  
19 Q. Do you believe that this would be a  
20 high priority site but for the State of South  
21 Carolina being the lead agency? If EPA was  
22 lead agency, would this be a high priority?  
23 A. I don't know.  
24 Q. You didn't have conversations with

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1 MR. GEDDIE: I object to the form  
2 of the question.  
3 THE WITNESS: I don't know what  
4 DHEC intends.  
5 BY MR. MULLMAN:  
6 Q. Okay. And they haven't told Exide  
7 that they want the cleanup at King Acres to be  
8 400, have they?  
9 A. Not to my knowledge.  
10 Q. Okay.  
11 MR. MULLMAN: There are two  
12 documents here, January 13, 1999, from the  
13 EPA, and a memo from Kevin Koporec from the  
14 EPA. The reason they're together is that  
15 the first one says that the other one was  
16 attached. So we'll just make that one.  
17 (Whereupon, Exhibit 13 was marked  
18 for identification.)  
19 BY MR. MULLMAN:  
20 Q. Do you remember receiving this  
21 letter?  
22 A. Yes.  
23 Q. Okay. And do you remember receiving  
24 the memo from Kevin Koporec?

1 Reuben Bussey related to that?  
2 A. Not on this subject, no.  
3 Q. Okay. Going to the --  
4 A. To be clear, not on the subject of  
5 whether Westgate would be a low- or  
6 high-priority site.  
7 Q. Okay. Going to Kevin Koporec,  
8 do you believe that this gave Exide  
9 justification why the cleanup should be  
10 parts per million?  
11 A. No.  
12 Q. On the second page, second paragraph  
13 it says, "As noted above, 400 parts per million  
14 is the screening level for lead and soil at  
15 CERCLA sites. This is based on the EPA  
16 Integrated Exposure Uptake and Biokinetic  
17 run with model defaults for all exposure  
18 parameters other than soil and dust lead  
19 concentrations." Correct?  
20 A. That's what it says.  
21 Q. Now, I think you stated before that  
22 AGC was unable to do an IEUBK model  
23 A. No. What I said was AGC was  
24 given all of the data necessary to do a cc



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1 IEUBK model run without importing data for one  
2 parameter.

3 Q. Okay. What parameter was that, do  
4 you remember?

5 A. I believe it was house dust, but I  
6 can be wrong about that. I'd have to rely on --  
7 I'd have to look at the AGC submittal to DHEC to  
8 be certain.

9 Q. Well, if the lead is in soil, why  
10 would house dust be important?

11 A. As I said before, I am far from an  
12 expert in the model or what the parameters are  
13 or how they interact with one another. I just  
14 know it's one of the parameter inputs.

15 Q. Would you and Exide then defer to AGC  
16 on this point?

17 A. We would defer to AGC on any -- on  
18 how the model -- how the inputs are used and how  
19 the model is run and was run for Westgate.

20 MR. MULLMAN: All right. We'll  
21 move on. I'm not sure why, but there's two  
22 copies of this letter together. This will  
23 be Plaintiff's Exhibit No. 14.

24 (Whereupon, Exhibit 14 was marked

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1 for identification.)

2 MR. MULLMAN: I assume that's how  
3 we received it from the EPA, so --

4 MR. GEDDIE: They serve  
5 duplicates, too.

6 BY MR. MULLMAN:

7 Q. Do you remember writing this letter  
8 to Mr. Bussey at the EPA?

9 A. Yes.

10 Q. It seems in this letter, and, please,  
11 I don't want to mischaracterize the letter, that  
12 you're kind of frustrated or complaining about  
13 the back and forth between EPA and DHEC; is that  
14 true?

15 A. That's very true. It was a source of  
16 constant frustration for us because it prevented  
17 any forward progress on this matter.

18 Q. Could Exide have just taken the lead  
19 and cleaned it up at a certain level?

20 A. Exide cannot take the lead agency  
21 role because that is one, by statute, reserved  
22 for government agencies.

23 Q. Okay. What about in King Acres with  
24 property that you own?

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1 A. As I said before, we could physically  
2 perform a cleanup, but it would be not one  
3 endorsed by any government agency.

4 Q. Okay. Did Mr. Bussey respond to this  
5 letter?

6 A. I believe he did. I don't know the  
7 date of his response.

8 Q. In the second page, you mention that  
9 we would bring our consultant, on the second to  
10 the last paragraph. Is that AGC that you're  
11 mentioning there or is --

12 A. I'm sorry. Where are you reading  
13 from?

14 Q. The second to the last paragraph,  
15 second to the last line. Saying, "We would.  
16 bring our consultant." Is that AGC that you're  
17 talking about?

18 A. That would be AGC, correct.

19 Q. And are you trying to set up a  
20 meeting with the EPA people?

21 A. Yes.

22 Q. And at this point, you believe that  
23 EPA was the lead agency, or do you believe that  
24 DHEC was the lead agency?

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1 A. At the time the letter was written?

2 Q. Yes.

3 A. Well, as I said on the bottom, the  
4 first sentence of the third paragraph of the  
5 letter, there was a great deal of confusion as  
6 to who was the lead agency at that point in  
7 time, as there had been in the several prior  
8 times.

9 Q. Well, since Gary Stewart's July 1997  
10 letter, has EPA and DHEC agreed that 400 parts  
11 per million should be the cleanup level?

12 A. EPA has indicated they do not object  
13 to a 400 ppm cleanup level at Westgate.

14 Q. But doesn't Kevin Koporec, who is in  
15 EPA, doesn't that indicate that they not only  
16 object, but that they agree with 400 parts per  
17 million being the appropriate clean-up level at  
18 Westgate Trailer Park?

19 A. I don't believe that is Mr. Koporec's  
20 opinion.

21 Q. Okay. Let's go back. Perhaps I  
22 didn't -- the second page.

23 MR. GEDDIE: What exhibit?

24 THE WITNESS: 13, I believe.



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1 Second page of the memorandum?  
 2 BY MR. MULLMAN:  
 3 Q. Yes. Can you read the second  
 4 paragraph from the top, the last line. Second  
 5 paragraph, the first full paragraph.  
 6 A. Which paragraph? Sorry.  
 7 Q. Let me show you. It's probably  
 8 easier that way.  
 9 A. Which line did you want me to read?  
 10 Q. Last one. "From --"  
 11 A. "From the information presented there  
 12 is no basis to alter the default ratio as 0.7;  
 13 therefore, the soil lead concentration needed to  
 14 protect human health is 400 ppm lead in soil."  
 15 Q. So does that indicate that EPA not  
 16 only doesn't object to DHEC's cleanup level, but  
 17 agrees with it and supports it?  
 18 A. In the absence of site-specific  
 19 information, that may be a fair reading of this  
 20 statement.  
 21 Q. Okay. And how long would it take to  
 22 get the site-specific information?  
 23 A. We had proposed that we could get the  
 24 information in two weeks.

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1 Q. Okay. When did you propose that?  
 2 A. To DHEC on several occasions; to EPA  
 3 in May 1999.  
 4 Q. And this has been going on since at  
 5 least July 1997, correct?  
 6 A. That's correct.  
 7 Q. Okay.  
 8 A. And no one ever gave us authority  
 9 to -- well, that's not true. DHEC never gave us  
 10 authority to go ahead, or approval to go ahead  
 11 and collect that data.  
 12 Q. Okay.  
 13 MR. MULLMAN: This is June 15,  
 14 1999 letter to Mr. Lebo.  
 15 (Whereupon, Exhibit 15 was marked  
 16 for identification.)  
 17 BY MR. MULLMAN:  
 18 Q. This is to Mr. Lebo. Do you remember  
 19 seeing this document, this letter?  
 20 A. I'm going to take a moment to look at  
 21 it, please.  
 22 Q. Okay.  
 23 A. Yes, I do recall seeing this letter.  
 24 Q. It talks about a -- on October 23,

11

1 1998, the Department contacting Mr. Lebo  
 2 regarding the need for additional sampling of  
 3 the King Acres subdivision, correct?  
 4 A. That's what it says.  
 5 Q. And has that sampling been done?  
 6 A. It's either being done or it's been  
 7 done. I believe it's been done.  
 8 Q. Okay. It also states, in that same  
 9 paragraph, the third line from the bottom in  
 10 that paragraph, the state's industrial clean-up  
 11 number of 895 parts per million was not  
 12 appropriate, according to Exide.  
 13 Do you agree with that? Has DHEC  
 14 asked you to clean up the site to 895 parts per  
 15 million?  
 16 A. They have not asked us to clean up  
 17 the site to 895 parts per million.  
 18 Q. Have you submitted a proposal for  
 19 collecting additional samples in the Kings Ac  
 20 subdivision?  
 21 A. Yes, we did.  
 22 Q. Okay. And that is pursuant to the  
 23 Consent Order of 96-12-HW?  
 24 A. I'm not sure if it's pursuant to that

1 Consent Order or just in cooperation with th  
 2 DHEC request.  
 3 Q. Okay. On the second page, the first  
 4 line, the first complete sentence. "If you fee  
 5 additional sampling and/or modeling is not  
 6 required, then a remediation plan for Kings  
 7 Acres, which delineates the areas of remove  
 8 400 parts per million, should be submitted  
 9 within 45 days of receipt of this letter,"  
 10 correct?  
 11 A. That's what it states.  
 12 Q. Now, does DHEC want you to clea  
 13 Kings Acres to 400 parts per million?  
 14 MR. GEDDIE: I object to the fo  
 15 of the question.  
 16 THE WITNESS: I don't know w  
 17 DHEC wants.  
 18 BY MR. MULLMAN:  
 19 Q. Okay. Have they informed you of  
 20 that?  
 21 A. That they want us to clean up to 4  
 22 ppm?  
 23 Q. Yes.  
 24 A. No.



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1 Q. And have you -- is this why you did  
2 additional sampling, because you feel it's  
3 necessary, pursuant to this letter?  
4 A. We had told DHEC, prior to this  
5 letter, that we thought that additional sampling  
6 was necessary to be able to run the IEUBK model  
7 for Kings Acres.  
8 Q. Okay. And who was collecting the  
9 wipe samples for this IEUBK model, is it AGC?  
10 A. I don't recall specifically what data  
11 is being collected, but all the data collection  
12 is by AGC or subcontractors of theirs.  
13 Q. Okay. And are you aware of who the  
14 subcontractors are?  
15 A. I don't know that there are any  
16 subcontractors. Sometimes they do use  
17 subcontractors for specific tasks.  
18 Q. Okay.  
19 (Whereupon, Exhibit 16 was marked  
20 for identification.)  
21 BY MR. MULLMAN:  
22 Q. It mentions -- well, do you remember  
23 writing this letter?  
24 A. Yes.

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1 Q. It mentions sending a separate cover,  
2 a notebook, containing the materials which  
3 contain the communications between Exide and  
4 DHEC. Do you remember sending that?  
5 A. Yes.  
6 Q. Is that going to be disclosed to  
7 plaintiff's counsel in this case?  
8 A. If there's an appropriate request,  
9 I'm sure we'll provide it.  
10 Q. Okay.  
11 MR. GEDDIE: Have you asked for  
12 it?  
13 MR. MULLMAN: I think so. We  
14 asked for all correspondence. I think this  
15 would fall under it.  
16 MR. GEDDIE: Well, then, you'll  
17 get it.  
18 MR. MULLMAN: Okay.  
19 BY MR. MULLMAN:  
20 Q. In the second paragraph, the fourth  
21 line, it says, "Rather than respond, or even  
22 challenge Exide to confirm its commitment, DHEC  
23 simply decided to bring NEIC into the picture."  
24 Why do you believe that DHEC was the

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1 one who brought NEIC into the picture?  
2 A. EPA has stated as much to us.  
3 Q. Okay. And that memo that we looked  
4 at before --  
5 A. It was towards the beginning --  
6 Q. Was it?  
7 A. -- of the exhibit.  
8 MR. GEDDIE: The NEIC report is  
9 No. 2, Draft Report.  
10 MR. MULLMAN: Yeah. I don't want  
11 the NEIC report. I want the EPA letter  
12 talking about the objectives in getting the  
13 NEIC --  
14 BY MR. MULLMAN:  
15 Q. It's Exhibit 9, then, I'm talking  
16 about. Why don't you review that. Does that  
17 letter and accompanying memo indicate that EPA  
18 was the one who got NEIC involved?  
19 A. This memo, by itself, is unclear. It  
20 states, quote, Regional waste division staff in  
21 working with South Carolina asked us if we knew  
22 of a way to show responsibility of lead  
23 deposition or could assist them in doing so.  
24 Therefore, it's not clear from this

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1 memo whether the request originated with EPA or  
2 with DHEC or with someone else instead of South  
3 Carolina.  
4 Q. Do you know if DHEC requested EPA to  
5 ask NEIC to get involved so that they would have  
6 justification for Exide to clean it up at 400  
7 parts per million?  
8 A. My understanding is that NEIC was not  
9 doing anything to address the cleanup level,  
10 but, rather, to determine whether they could  
11 espeeiate (phonetic) lead by source.  
12 I'm not sure that that answered all  
13 of your question.  
14 Q. It's good enough.  
15 Okay. The next page. The  
16 paragraph --  
17 A. Still on Exhibit 9?  
18 Q. No, I'm sorry. I'm back to --  
19 MR. GEDDIE: 16?  
20 BY MR. MULLMAN:  
21 Q. 16, yeah.  
22 A. You're on the second page of the  
23 letter?  
24 Q. Yes. The second to the last



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1 paragraph. "It is evident from the foregoing  
2 that DHEC mislead EPA if it indicated that Exide  
3 had refused to proceed with remediation at the  
4 site."

5 Now, how did they mislead EPA, if  
6 Exide is disagreeing with the cleanup level of  
7 400 parts per million?

8 A. The disagreement over the cleanup  
9 level postdates DHEC's referral of the matter to  
10 EPA and request for NEIC to become involved,  
11 based upon what EPA has indicated to us about  
12 the timing of that referral and request.

13 Q. Okay. And who at EPA told you that?

14 A. Billy Bright at EPA, Region 4.

15 Q. Okay. The next sentence says,  
16 "Therefore, there was no legitimate reason for  
17 the NEIC investigation," correct?

18 A. That's what it says.

19 Q. Well, if they're trying to figure out  
20 the source, isn't there a legitimate reason?

21 A. The question is, why are they  
22 spending any money trying to figure out the  
23 source?

24 Q. Because they want the responsible

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1 money and time.

2 Q. Okay. Well, I don't -- I mean, what  
3 makes you think that the NEIC was gunning for  
4 Exide or trying to prove that Exide was the  
5 source? I think they're just trying to figure  
6 out who the source is, not that Exide is the  
7 source.

8 MR. GEDDIE: Is that the  
9 question?

10 BY MR. MULLMAN:

11 Q. Yeah. I'm saying -- well, he kind of  
12 phrased it that the NEIC is kind of trying to  
13 determine if Exide is the source, and I'm  
14 wondering why you think that?

15 A. As I said earlier, we are not aware  
16 of any actual report of the NEIC investigation,  
17 but it has been indicated to us that that was  
18 the focus of the NEIC investigation.

19 Q. Okay. Who told you that?

20 A. Personnel at EPA.

21 Q. Personality PA?

22 A. Personnel at EPA.

23 Q. Oh. Well, which personnel?

24 A. In discussions with Mr. Bussey and

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1 party to pay for the cleanup?

2 A. The allegedly responsible party at  
3 that point has already indicated it wants to sit  
4 down with DHEC and discuss future progress at  
5 the site, including cleanup, prior to the date  
6 of the DHEC referral to the EPA.

7 Q. So you're admitting that Exide is the  
8 responsible party then?

9 A. No. I'm stating that Exide had  
10 already stated to DHEC in writing that it was  
11 willing to proceed with further action with the  
12 site at its cost.

13 Q. Well, what if EPA and DHEC wanted to  
14 know who the other sources are besides Exide?

15 A. If that's what they wanted to know,  
16 then that would be an appropriate action, but  
17 not one for which Exide ought to be responsible.

18 Q. Okay. So you just -- the complaint  
19 is that you didn't want to pay for the NEIC  
20 investigation?

21 A. The complaint is, that insofar as the  
22 NEIC investigation was focused on proving  
23 Exide's culpability or liability for lead levels  
24 at Westgate Trailer Park, it was a waste of

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1 Mr. Bright -- from discussions with Mr. Bussey  
2 and Mr. Bright, I would infer that that was the  
3 purpose of the NEIC investigation.

4 Q. Okay. Well, an inference is a little  
5 different than them specifically telling you.

6 A. Mr. Bussey and Mr. Bright have  
7 indicated that the reason the NEIC was asked to  
8 do any work was because DHEC told EPA that Exide  
9 had refused to proceed with cleanup at the site  
10 as of February of 1997.

11 Q. Okay.

12 A. And that being the reported impetus  
13 for the NEIC investigation, we conclude that we  
14 are at least a principal, if not the target, of  
15 the NEIC investigation.

16 Q. Okay. Who is Billy Bright -- well,  
17 what is his job at the EPA?

18 A. I don't know his exact title. I  
19 believe he's in the enforcement section or maybe  
20 in the cost recovery section at Region 4.

21 Q. Okay. Well, what if the NEIC report  
22 indicates that Exide is not a responsible party?  
23 Wouldn't that be something that Exide wants to  
24 know? I mean, then you wouldn't have to pay for



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1 the cleanup.  
 2 A. Well, we've already done that, so it  
 3 wouldn't do much good for us.  
 4 Q. Would you want the NEIC to do a study  
 5 of King Acres or anything to maybe get you off  
 6 the hook for cleaning up King Acres?  
 7 A. Again, it's our position that any  
 8 work the NEIC has done and might do of a similar  
 9 nature in this area would be unnecessary.  
 10 Q. Because Exide is committing to  
 11 cleaning up?  
 12 A. Exide has agreed, has repeatedly  
 13 agreed, offered, and continues to, to do  
 14 cleanups to appropriate levels.  
 15 Q. Okay. Why?  
 16 A. As I indicated earlier, we believe  
 17 that we have contributed to lead levels in these  
 18 areas.  
 19 Q. Okay.  
 20 (Whereupon, Exhibit 17 was marked  
 21 for identification.)  
 22 BY MR. MULLMAN:  
 23 Q. And, once again, I think a page  
 24 that's kind of had to be faxed to us was

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1 missing. It was not connected. Is this  
 2 Mr. Bussey's letter in response to your May 28,  
 3 1999 letter?  
 4 A. That's what it states in the first  
 5 sentence, so I assume that's the case.  
 6 Q. And do you remember receiving this  
 7 letter?  
 8 A. Yes.  
 9 Q. And does this letter indicate why  
 10 NEIC was involved?  
 11 A. Yes. It states EPA's explanation as  
 12 of that date for how -- at least how NEIC became  
 13 involved, not why.  
 14 Q. Okay. What's that explanation?  
 15 MR. GEDDIE: Doesn't the letter  
 16 speak for itself?  
 17 MR. MULLMAN: I want Mr. Levine's  
 18 interpretation of the letter.  
 19 THE WITNESS: Why don't -- well,  
 20 I can't -- I'm not sure what you mean by my  
 21 interpretation of the letter.  
 22 BY MR. MULLMAN:  
 23 Q. Well, when you read it, what did you  
 24 think it meant?

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1 MR. GEDDIE: Objection. I think  
 2 the letter speaks for itself, but answer it  
 3 if you can.  
 4 THE WITNESS: I believed it to be  
 5 consistent with -- and believe it to be  
 6 consistent with my understanding of how the  
 7 NEIC investigation started, as I stated in  
 8 my last answer, that it was a referral from  
 9 DHEC stating to EPA that Exide had refused  
 10 to proceed with the cleanup.  
 11 BY MR. MULLMAN:  
 12 Q. Okay. Well, does EPA agree with DHEC  
 13 assertions that EPA -- I mean that Exide was not  
 14 agreeing to clean up Westgate Trailer Park?  
 15 A. I don't know what EPA believes about  
 16 that.  
 17 Q. Okay. Well, in the second page, EPA  
 18 is --  
 19 A. The page marked No. 2 on the bottom?  
 20 Q. Yes. EPA, Mr. Bussey, at least, from  
 21 the EPA, states, "This reply --"  
 22 A. I'm sorry. Where are you reading?  
 23 Q. Middle to -- right in the middle of  
 24 the page in the paragraph "In its letter --"

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1 A. Oh, I see where you're reading from.  
 2 Q. It says, "This reply falls somewhat  
 3 short of resounding assurance of Exide's  
 4 willingness to proceed with site cleanup, and  
 5 the claim made in the site investigation report,  
 6 that Exide did not contribute to lead  
 7 contamination in the trailer park was not  
 8 retracted."  
 9 So would you agree that EPA is kind  
 10 of agreeing with DHEC there, saying Exide hasn't  
 11 told us that they agreed to proceed with site  
 12 cleanup, at least as of this letter, June 21,  
 13 1999?  
 14 A. I think the letter speaks for itself.  
 15 Q. Okay. Well, did you ever -- or did  
 16 Exide ever retract the assertion in the site  
 17 investigation report that they did not  
 18 contribute to lead contamination in the trailer  
 19 park?  
 20 MR. GEDDIE: Objection to the  
 21 form of the question.  
 22 If you understand it, you can  
 23 answer it.  
 24 BY MR. MULLMAN:



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1 Q. If you want me to rephrase it, that's  
2 fine.  
3 A. Please.  
4 Q. Okay. Has Exide ever, in  
5 correspondence or in conversations with EPA or  
6 DHEC, have they ever retracted the statement  
7 that's in the site investigation report stating  
8 that they were not -- did not contribute to the  
9 lead contamination in the trailer park?  
10 MR. GEDDIE: I object to the form  
11 of the question.  
12 THE WITNESS: That's not what  
13 this excerpt even says.  
14 BY MR. MULLMAN:  
15 Q. We're not talking about the excerpt.  
16 We're talking about the question now. Did Exide  
17 ever, in correspondence or conversation, tell  
18 DHEC or EPA that they were a contributing factor  
19 to the lead in Westgate Trailer Park?  
20 A. Exide repeatedly offered to conduct a  
21 cleanup for the Westgate -- for lead in soil at  
22 the Westgate Trailer Park, notwithstanding the  
23 perfectly valid technical point, which is made  
24 in the excerpt in Exhibit 17, from which you

1 A. Since there's been no NEIC report, I  
2 don't know.  
3 Q. Well, there's been a draft, correct?  
4 A. As far as I know, yes.  
5 Q. And does that draft indicate who the  
6 source is?  
7 A. No.  
8 Q. Okay. Lower down in the next  
9 paragraph, the last line, I know we've discus  
10 this before, but it seems to be still an issue  
11 in this letter. "DHEC required a soil removal  
12 to a minimum of six inches instead of the  
13 three-inch depth proposed in Exide's July 1  
14 Remediation Plan."  
15 And I'm wondering, at this point,  
16 which was only a couple months before the  
17 cleanup, was DHEC still asking Exide to cl  
18 up to six inches?  
19 A. Yes, it was.  
20 Q. And when did they change their mi  
21 on that?  
22 A. Sometime prior to entry of the  
23 Consent Agreement on August 5th -- or, I'r  
24 sure it was prior to, but sometime in that

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1 read earlier.  
2 Q. Okay. That doesn't really answer my  
3 question though. Did Exide ever tell EPA or  
4 DHEC that they were a contributing factor to the  
5 lead in Westgate Trailer Park or King Acres  
6 subdivision?  
7 A. No.  
8 Q. Okay. On Page 3, the third  
9 paragraph, starting with, "Again --" the second  
10 line or in the second sentence it says, "Exide  
11 continues to complain that lead in soils at  
12 Westgate did not originate from the Exide plant,  
13 yet DHEC persists in its demands for a cleanup  
14 plan from Exide."  
15 Do you agree with that sentence?  
16 A. No.  
17 Q. Okay. Why not?  
18 A. Exide's position has not been that it  
19 was not a contributing source, but rather, that  
20 the variability of the data does not, in and of  
21 itself, conclusively resolve the question as to  
22 whether Exide is the sole source.  
23 Q. And would the NEIC report  
24 conclusively answer that question?

1 July/August time frame.  
2 Q. Okay. This letter is July 21st, so  
3 sometime between -- I mean, I'm sorry. June  
4 21st. So sometime between June 21st and A  
5 5th, they changed --  
6 A. I'm sorry. I didn't mean to  
7 interrupt.  
8 Q. They changed their mind between th  
9 time period?  
10 A. It may have been shortly after Augu  
11 5th. I don't recall, frankly, whether it was  
12 something covered in the Consent Agreeeme  
13 the subsequent work plan.  
14 Q. Was that part of Exide's willingness  
15 to clean it up?  
16 MR. GEDDIE: I object to the  
17 form.  
18 THE WITNESS: I'm not sure wh  
19 you mean by was it part of Exide's --  
20 MR. MULLMAN: I'll rephrase.  
21 BY MR. MULLMAN:  
22 Q. Would Exide have cleaned it up to  
23 inches if DHEC demanded it?  
24 A. I don't know the answer to that. A.



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1 I said before, though, the resolution of that  
2 question was one made by technical personnel at  
3 DHEC and in discussing with AGC, not through or  
4 by lawyers.

5 Q. Okay.

6 A. So I was not a party to that  
7 discussion.

8 Q. Okay. That makes sense.

9 (Whereupon, Exhibit 18 was marked  
10 for identification.)

11 BY MR. MULLMAN:

12 Q. This is a newspaper article in the  
13 Greenville News, June 23, 1999. Do you remember  
14 speaking to Bob Montgomery about this?

15 A. I've talked to Mr. Montgomery a  
16 couple of times about the Westgate -- the  
17 subject of Westgate.

18 Q. It mentions that -- if you see it,  
19 your name right here.

20 A. Yes.

21 Q. That "Exide offered to do the cleanup  
22 at a proposed level of 500 parts per million, a  
23 standard EPA has used in a number of residential  
24 areas in several states." Do you remember

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1 making that statement?

2 A. Yes.

3 Q. Okay. Do you know what other sites  
4 or residential areas or what other states  
5 they've used that in?

6 A. I know there are several. The one  
7 that comes to mind right now is Granite City,  
8 Illinois.

9 Q. And was that part of an Exide  
10 cleanup?

11 A. Exide is participating in that  
12 cleanup with a number of other potentially  
13 responsible parties.

14 Q. Are there children with high lead  
15 levels in those -- in that site?

16 A. I don't know. Assuming, by high lead  
17 levels, you mean elevated above ten?

18 Q. Elevated.

19 Well, do you know the sites that  
20 you're mentioning here, if there were kids with  
21 elevated lead levels in all those sites, or in  
22 any of those sites?

23 A. Right now, I don't recall what the  
24 blood lead levels were at those sites.

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1 Q. Okay.

2 (Whereupon, Exhibit 19 was marked  
3 for identification.)

4 BY MR. MULLMAN:

5 Q. I'm showing you a newspaper article  
6 dated June 25, 1999 from the Spartanburg Herald  
7 Journal. On Page 2, they have some quotes,  
8 which I believe are from you, Mr. Levine. Do  
9 you remember talking to Susan Orr?

10 A. I've talked to Ms. Orr on a couple of  
11 occasions. I don't recall specifically when  
12 this conversation was.

13 Q. Okay. And, once again, it seems that  
14 you were quoted as saying that the higher number  
15 still would protect public health and 500 parts  
16 per million has been the acceptable standard in  
17 other cleanups Exide has done. Besides the two  
18 you've mentioned, are there any other sites --

19 A. There are other -- I'm sorry --

20 Q. -- that you can think of?

21 A. There are other sites, but none that  
22 I can recall sitting here right now.

23 Q. Okay. So is it fair to say that  
24 you're using other sites that Exide cleaned up

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1 as relevant to what their standard should be in  
2 this case?

3 A. Absent a site-specific analysis, yes.

4 Q. Okay. And it says here, "We would  
5 just like to know that there is a scientific  
6 basis for a more strict cleanup, Levine said,"  
7 correct? Is that what you told them?

8 A. Yes.

9 Q. And you don't believe that Kevin  
10 Koporec, a toxicologist for EPA, his memo, gives  
11 you a scientific basis for that?

12 A. Mr. Koporec's memo does not provide  
13 such a basis.

14 Q. Okay. And you said that the stricter  
15 cleanup would cost about twice as much because  
16 it would involve removing more soil. How is  
17 that? Can you explain that? If you're going to  
18 take three inches off, does it matter if four or  
19 500?

20 A. At the time that this article was  
21 written, and, therefore, at the time I spoke to  
22 Ms. Orr, the discussion between ourselves and  
23 DHEC was over whether the cleanup level was  
24 400 or 500, and not a wholesale removal of soil.



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1 And therefore, a lower cleanup level necessarily  
 2 requires removal of more soil.  
 3 Q. Okay. Well, was there a wholesale  
 4 removal of soil at Westgate?  
 5 A. Yes, there was.  
 6 Q. Okay.  
 7 A. About three months after this article  
 8 was written.  
 9 Q. Okay. So you've removed all three  
 10 inches from the whole Westgate Trailer Park, is  
 11 that --  
 12 A. I don't recall if there was an area  
 13 that was not included or not, but certainly all  
 14 the areas where the trailers are placed, where  
 15 people reside.  
 16 Q. Okay. What about underneath the  
 17 trailers?  
 18 A. There was an analysis made -- no, we  
 19 did not do a wholesale removal of soil below the  
 20 trailers.  
 21 Q. Okay. You just cemented those areas?  
 22 A. Certain areas, yes.  
 23 Q. And did you rely on an expert or a  
 24 consultant to make the decision to cement those

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1 areas up instead of remove the soil?  
 2 A. I did rely on a consultant in making  
 3 that decision, yes.  
 4 Q. Okay. Did you make that decision or  
 5 was it somebody else?  
 6 A. I made that decision.  
 7 Q. Okay. Who did you rely upon?  
 8 A. Advanced Geo Services.  
 9 Q. And what scientific basis did they  
 10 give you for that?  
 11 A. The best summary of the scientific  
 12 analysis is the letters that they sent to Scott  
 13 Wilson explaining their analysis.  
 14 There was one letter that summarized  
 15 it, and there was another letter when Scott  
 16 asked them to evaluate that remedy in light of  
 17 certain criteria DHEC identified, and there was  
 18 a subsequent letter in which AGC analyzed that  
 19 method in light of the criteria specified.  
 20 MR. MULLMAN: Okay. That's it  
 21 for me.  
 22 MR. GEDDIE: All right. No  
 23 questions from me.  
 24 ---

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(Whereupon, the deposition  
 concluded at 3:15 p.m.)  
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# INSTRUCTIONS TO WITNESS

1 ---  
 2  
 3  
 4 Please read your deposition over carefully  
 5 and make any necessary corrections. You should  
 6 state the reason in the appropriate space on the  
 7 errata sheet for any correction that is made.  
 8 After doing so, please sign the errata  
 9 sheet and date it.  
 10 You are signing same subject to the  
 11 changes you have noted on the errata sheet,  
 12 which will be attached to your deposition.  
 13 It is imperative that you return the  
 14 original errata sheet to the deposing attorney  
 15 within thirty (30) days of receipt of the  
 16 deposition transcript by you. If you fail to do  
 17 so, the deposition transcript may be deemed to  
 18 be accurate and may be used in court.  
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 20  
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